

**. Vol. I**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1943**

**No. 31**

**McLEAN TRUCKING COMPANY, INC.,—THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, AND AMERICAN FARM BUREAU FEDERATION, APPELLANTS**

**vs.**

**THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., BARNWELL BROTHERS, INC., ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK**

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1 In District Court of the United States for the Southern  
District of New York

Civil Action No. 18-116

McLEAN TRUCKING COMPANY, INC., PLAINTIFF

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ASSOCIATED TRANSPORT, INC., ARROW CARRIER CORPORATION, BARNWELL BROTHERS, INCORPORATED, CONSOLIDATED MOTOR LINES, INCORPORATED, HORTON MOTOR LINES, INCORPORATED, MCCARTHY FREIGHT SYSTEM, INC., M. MORAN TRANSPORTATION LINES, INC., SOUTHEASTERN MOTOR LINES, INCORPORATED, TRANSPORTATION, INCORPORATED, THE TRANSPORT COMPANY, KUHN, LOEB & COMPANY, BARNWELL WAREHOUSE & BROKERAGE COMPANY, BROWN EQUIPMENT & MANUFACTURING COMPANY, CONGER REALTY COMPANY, AND SOUTHERN NEW ENGLAND TERMINALS, INC., DEFENDANTS

*Bill of complaint*

*To the Honorable Judges of the District Court of the United States for the Southern District of New York:*

Comes now the plaintiff above named and for its cause of suit against the defendants alleges and shows:

I

That the plaintiff is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at Fayetteville, in the State of North Carolina; that said plaintiff is engaged in the business of transporting general commodities for hire in interstate commerce as a common carrier by motor vehicle between points and places in the States of North Carolina, South Carolina and Virginia, on the one hand, and points and places in the District of Columbia, Maryland, Pennsylvania, Delaware, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts, on the other hand; that said plaintiff is subject to regulation by the Interstate Commerce Commission and is authorized to carry on and conduct said business.

II.

That this suit is brought against the United States of America under an act of Congress approved October 22, 1913, known as the "District Court Jurisdiction Act," being part of the "Urgent

Deficiency Appropriations Act," 38 Stat. L. 219, to enjoin, set aside and annul a certain order entered by the Interstate Commerce Commission (hereinafter called the Commission) on March 16, 1942, in a proceeding known as Docket No. MC-F-1612, Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al., and Docket No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities.

### III

That the party upon whose application the order of the Interstate Commerce Commission herein referred to was made, is defendant Associated Transport, Inc., a corporation created, organized and existing under the laws of the State of Delaware, with offices and principal place of business in the City of New York, New York, in this judicial district.

(a) That defendant Associated Transport, Inc., filed application to acquire control and merge the operating rights and properties of the defendant common carriers of property by motor vehicle, and the defendant associated noncarrier companies, all as described below:

(b) Arrow Carrier Corporation, hereinafter referred to as Arrow, is a corporation organized and existing under the laws of New Jersey, with its principal place of business in Paterson, New Jersey, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of New York, New Jersey, and Pennsylvania.

(c) Barnwell Brothers, Incorporated, hereinafter referred to as Barnwell, is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Burlington, North Carolina, and conducts operations as a common carrier of property by motor vehicle in and between points in the State of South Carolina, on the south, extending northeastward to points in the States of Pennsylvania and New York, on the north, and to and between points in intermediate states.

(d) Consolidated Motor Lines, Incorporated, hereinafter referred to as Consolidated, is a corporation organized and existing under the laws of Connecticut, with its principal place of business in Hartford, Connecticut, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania.

(e) Horton Motor Lines, Incorporated, hereinafter referred to as Horton, is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Char-

lotte, North Carolina, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Georgia, on the south, extending northeastward to points in the States of Pennsylvania and New York, on the north, and to and between points in intermediate states.

(f) McCarthy Freight System, Inc., hereinafter referred to as McCarthy, is a corporation organized and existing under the laws of Massachusetts, with its principal place of business in Taunton, Massachusetts, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Massachusetts, Connecticut, Rhode Island, and New York. McCarthy also operates as a contract carrier of special commodities between points in the States of New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and New Hampshire.

(g) M. Moran Transportation Lines, Inc., hereinafter called Moran, is a corporation organized and existing under the laws of New York, with its principal place of business in Buffalo, New York, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of New York, Pennsylvania, and Ohio.

(h) Southeastern Motor Lines, Incorporated, hereinafter referred to as Southeastern, is a corporation organized and existing under the laws of Virginia, with its principal place of business in Bristol, Virginia, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Tennessee and North Carolina, on the south, extending northeastward to and between points in the States of New York and Pennsylvania, on the north, and to and between points in intermediate states.

(i) Transportation, Incorporated, hereinafter referred to as Transportation, is a corporation organized and existing under the laws of Georgia, and conducts operations as a common carrier of property by motor vehicle in and between points in the States of Tennessee, North Carolina, South Carolina, Georgia, Alabama, Louisiana, and Florida.

(j) The Transport Company is a corporation organized and existing under the laws of Delaware, with its principal office in New York, New York, which corporation at the time of the filing of the application herein and the hearings thereon had an option to purchase all of the outstanding stock of Arrow Carrier Corporation.

(k) Kuhn, Loeb & Company, a partnership, investment bankers, with their principal place of business in New York, New York, controls the Transport Company through ownership of all of its outstanding stock and is now and for many years last past



has been, banker for the Pennsylvania Railroad Company and the Baltimore and Ohio Railroad Company which operate in the area of the motor carriers herein proposed to be merged.

(l) Barnwell Warehouse & Brokerage Company is a corporation organized and existing under the laws of North Carolina, with its principal place of business at Burlington, North Carolina, and conducts a warehousing, terminal storage business.

(m) Brown Equipment & Manufacturing Company is a corporation organized and existing under the laws of North Carolina, with its principal place of business at Charlotte, North Carolina, and manufactures equipment for Horton.

(n) Conger Realty Company is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Charlotte, North Carolina, and constructs, owns, and maintains certain warehouse and terminal facilities used by Horton.

(o) Southern New England Terminals, Inc., is a corporation organized and existing under the laws of Massachusetts, with its principal place of business in Taunton, Massachusetts, and owns and leases terminal facilities in various states to McCarthy.

#### IV

On July 25, 1941, defendant Associated Transport, Inc., filed the aforesaid application with the Commission in proceedings entitled Docket No. MC-F-1612, Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al., and Docket No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities, seeking authority under Section 5, Interstate Commerce Act, (1) to acquire control, through purchase of capital stock, of the aforesaid eight corporations, to-wit, Arrow, Barnwell, Consolidated, Horton, McCarthy, Moran, Southeastern, and Transportation, and (2) to merge into itself the operating rights and properties of these corporations within one year from date of acquisition of control. By separate application concurrently filed, as amended, defendant Associated Transport, Inc., sought authority under Section 214 of the act to issue preferred and common stock to enable it to acquire control of the above-mentioned companies, and the aforesaid four associated non-carrier companies, to provide funds for working capital and other corporate purposes, and for conversion from time to time of the preferred stock proposed to be issued. That the aforesaid motor carriers operate over 37,884 miles of public highways in nineteen (19) States. That, eliminating duplicate rights, the one company, defendant Associated Transport, Inc., would have operating



rights over 24,338 miles of public highways extending along the Atlantic seaboard from the Canadian border to the Gulf of Mexico.

## V

That on March 16, 1942, the Commission entered its report and final order, a copy of which is hereto attached and marked Exhibit A, and made a part of this complaint, authorizing and approving the proposed merger and transactions for which authority was sought as set forth in paragraph IV of this complaint, subject to certain conditions, pursuant to which defendant Associated Transport, Inc., is authorized to merge said motor carriers throughout this vast area. Following the entry of said order, petitions for rehearing, reargument and reconsideration were duly filed by the Antitrust Division of the Department of Justice, the Secretary of Agriculture, American Farm Bureau Federation, the National Grange, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society, Berks-Lehigh Mountain Fruit Growers, Inc., and Appalachian Apple Service, Inc., which petitions were denied by order of the Commission entered April 22, 1942, a copy of which order is hereto attached, marked Exhibit B.

## 6

## VI

That the operations and business of plaintiff is competitive with the operations and business of certain of the aforesaid common carriers by motor vehicle to be merged into defendant Associated Transport, Inc.; that plaintiff's operations and business will sustain irreparable injury, loss, and damage if the existing order of the Interstate Commerce Commission, Exhibit A herein, is allowed to become effective and the transactions therein authorized are consummated, for which it has no adequate remedy at law; and as grounds for granting the relief herein sought, plaintiff alleges and shows, in addition to the facts above, the following:

(a) That the merger of the defendant common carriers into defendant Associated Transport, Inc., will result in the control of tremendous volumes of freight in the management of defendant, Associated Transport, Inc., and that defendant, Associated Transport, Inc., will be able to demand, and will demand, that common carriers operating locally in the States served by plaintiff, McLean Trucking Company, Inc., and with whom traffic is presently handled jointly by these carriers and McLean Trucking Company, Inc., interchange their higher-rated freight, or all of their freight with defendant, Associated Transport, Inc., to the exclusion of

plaintiff, McLean Trucking Company, Inc., with resulting pecuniary loss to the plaintiff;

(b) That defendant, Associated Transport, Inc., as a result of its control of interchange traffic, its influence and control over connecting feeder and delivery lines, the widespread character of its operations extending throughout nineteen (19) States, and through its great financial resources, will:

(1) secure effective control and domination of rate-making procedure to the extent and with the effect of preventing free and independent action on the part of plaintiff McLean Trucking Company, Inc., and other competing carriers in establishing, changing, and publishing of reasonable competitive rates and charges for transportation services; and

(2) will have the power and will temporarily reduce its rates and charges for transportation services on commodities carried and between points served by plaintiff McLean Trucking Company, Inc., and other carriers providing similar transportation services, for the purpose of driving McLean Trucking Company, Inc., and other carriers out of business, thus depriving plaintiff and other carriers of traffic and revenues necessary for its and their continued successful operation.

(c) That plaintiff, McLean Trucking Company, Inc., serves certain points and places through interchange with other common carriers; that to many of these points and places certain of defendant motor carriers have the only adequate and direct services and facilities; that plaintiff McLean Trucking Company, Inc., will of necessity be compelled to interchange traffic originating at or destined to these points and places over routes to be operated by defendant Associated Transport, Inc.; and that as a result of the merger of such carriers into defendant Associated Transport, Inc., said defendant, Associated Transport, Inc., will discover the names of consignors and consignees, and the points of origin and destination of their shipments now known only to the individual carriers, and will thus be able to and will solicit and secure their traffic for movement wholly by defendant Associated Transport, Inc., to the total exclusion from participation therein by plaintiff McLean Trucking Company, Inc., to the pecuniary loss of said plaintiff McLean Trucking Company, Inc.

## VII

(a) That the construction and interpretation of the Interstate Commerce Act as made by the Commission in approving the application of defendant Associated Transport, Inc., is unsound in principle, unsupported by the facts, capricious, arbitrary, and contrary to the letter and spirit of said Act.

(b) That the order of the Commission is not supported by the findings.

(c) That the findings in the report of the Commission are not supported by substantial evidence.

(d) That in its interpretation of Section 5 of the Interstate Commerce Act, as set forth at pages 17 and 18 of the Commission's report, Exhibit A herein, the Commission adopts erroneous criteria for the approval of mergers and unifications of motor carriers subject to its jurisdiction which will result in restraint of competition.

8 (e) That the Commission erred in failing to properly apply the proviso of Section 5 (2) (b) to the transactions here involved and that it failed to require of applicant due proof that the merger will be consistent with the public interest and will enable the railroads with which applicant will be affiliated to use the service of the merged motor carrier lines to public advantage in the railroads' operations and will not unduly restrain competi-

(f) That the Commission erred in failing to find, as required by law and the evidence, that the substantial stock interest of Kuhn, Loeb & Company, bankers for two of the largest railroads operating in the territory of the motor carriers proposed to be merged, is not consistent with public interest.

(g) That the Commission erred in finding, contrary to law and the evidence, that if the proposed transactions are consummated, there would remain ample competitive motor carrier service throughout the territory involved.

(h) That the Commission erred in failing to find, as required by law and the evidence, that no effective motor carrier competition will exist for the consolidated operations of defendant Associated Transport, Inc., authorized to be conducted in the Commission's order hereto attached, marked Exhibit A.

(i) That the Commission erred in denying the petition for rehearing, reargument, and reconsideration of its final order, Exhibit A herein.

### VIII

That if the said order of the Commission, Exhibit A herein, is permitted to become effective, plaintiff will sustain further irreparable injury and damage for which it has no adequate remedy at law, because of

(a) The control which defendant Associated Transport, Inc., will have over freight to be transported by common carriers by motor vehicle along the Atlantic seaboard:

(b) The control of interchange of the aforesaid freight with other carriers;

(c) The control of rates, rules, and practices with relation thereto;

(d) The strong financial backing of investment banking houses of defendant, Associated Transport, Inc.

That this will so adversely affect the operations and business of plaintiff that it as a small motor carrier for hire cannot long survive.

9 WHEREFORE, plaintiff prays the court:

First, that a decree be entered annulling and setting aside the existing order of the Interstate Commerce Commission, Exhibit A herein;

Second, that by such decree the corporate defendants, their officers and agents, be perpetually enjoined and restrained from merging or attempting to merge said corporations pursuant to authority granted in said order, Exhibit A herein;

Third, that plaintiff have such other and further relief in the premises as the nature of the case shall require and to this court shall seem meet.

E. B. Ussery, *Washington, D. C.*

DAVIES, AUERBACK, CONNELL & HARDY,

*Attorneys for McLean Trucking Company, Inc.,*

*Address, One Wall Street, New York, N. Y.*

CHARLES V. GUTHRIE,

ORRIN J. JUDD,

*Of Counsel.*

[*Duly sworn to by Malcolm P. McLean, Jr., jurat omitted in printing.*]

10

#### EXHIBIT A

Interstate Commerce Commission

No. MC-F-1612<sup>1</sup>

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al.

Submitted February 26, 1942. Decided March 16, 1942

1. Acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of capital

<sup>1</sup> This report also embraces No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities.

stock, and consolidation into Associated Transport, Inc., of the operating rights and properties of such carriers, for ownership, management, and operation, approved and authorized, subject to conditions.

2. Issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock, having par value of \$100 per share, and 931,891 shares of common stock, without par or stated value, for replacement of outstanding common stock, for consummating the transaction, and for other corporate purposes, approved and authorized, subject to conditions.

Claude A. Cochran, Hugh M. Joseloff, and Mortimer A. Sullivan for applicant.

Joseph C. O'Mahoney and Henrik Shipstead for themselves.

Thurman Arnold, Charles B. Bowling, Fred Brenckman, Smith R. Brittingham, Jr., John S. Burchmore, W. G. Burnette, W. S. Campfield, Frank Coleman, Joseph W. Connolly, John B. Dempsey, Haskell Donoho, Charles J. Fagg, James A. Glenn, Edward F. Lacey, J. D. Lawson, James D. Mann, David G. Macdonald, Carroll W. Miller, John M. Miller, L. E. Newcomer, Thomas P. O'Brien, L. F. Orr, W. H. Ott, Jr., Joseph A. Padway, William A. Roberts, Floyd F. Shields, Herbert S. Thatcher, Fred A. Tobin, Mastin G. White, Arne C. Wiprud, and Warren Woods for interveners.

Leonard D. Adkins for Kuhn, Loeb & Company.

#### REPORT OF THE COMMISSION

##### BY THE COMMISSION:

Exceptions were filed to the examiner's proposed report by the Secretary of Agriculture, the Antitrust Division of the Department of Justice, herein called the Antitrust Division, The National Grange, the National Industrial Traffic League, and Super Service Motor Freight Company. Applicant replied, and the matter was orally argued before us.

11 By application filed July 25, 1941, Associated Transport, Inc., New York, N. Y., seeks authority under section 5, Interstate Commerce Act, (1) to acquire control, through purchase of capital stock, of eight corporations, viz:

Arrow Carrier Corporation, Paterson, N. J.  
 Barnwell Brothers, Incorporated, Burlington, N. C.  
 Consolidated Motor Lines Incorporated, Hartford, Conn.  
 Horton Motor Lines, Incorporated, Charlotte, N. C.  
 McCarthy Freight System, Inc., Taunton, Mass.  
 M. Moran Transportation Lines, Inc., Buffalo, N. Y.  
 Southeastern Motor Lines, Incorporated, Bristol, Va.  
 Transportation, Incorporated, Atlanta, Ga.



and (2) to consolidate into itself the operating rights and properties of these corporations<sup>2</sup> within one year from date of acquisition of control. By separate application concurrently filed, as amended, Associated Transport, Inc., seeks authority under section 214 of the act to issue 54,049 shares of preferred and 880,311 shares of common stock, having par value of \$100 and \$1 per share, respectively, to enable it to acquire control of the above-mentioned companies and four associated noncarrier companies,<sup>3</sup> to provide funds for working capital and other corporate purposes, and for conversion from time to time of the preferred stock proposed to be issued.

The applications were heard on a consolidated record, and briefs were filed. Granting of the authority requested is opposed by The Secretary of Agriculture, the Antitrust Division, the National Grange, four fruit-growers' associations, and, in part, by Super Service Motor Freight Company, a motor carrier. A number of other motor carriers, shippers, shipper organizations, the Lynchburg, Va., Chamber of Commerce, and The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America also intervened but, excepting the last-named organization, which supports the applications, took no definite position thereon. Evidence was introduced by the Antitrust Division and certain motor carriers.

Applicant, a Delaware corporation, was organized March 5, 1941, primarily for the purpose of effectuating the transactions proposed, and is not presently engaged in any business. It is authorized by its charter to issue 100,000 shares of \$100-par-value preferred stock, and 1,000,000 shares of \$1-par-value common stock. It has issued, and there are presently outstanding, 71,480 shares of common stock, the largest single stockholder being B. M. Seymour, its president, who owns 31,240 shares. The remainder of the outstanding stock is held by stockholders of the corporations of which applicant is proposing to acquire control. With the exception hereinafter mentioned, all of the outstanding stock was subscribed and paid for at par to provide funds for organization expenses and for prosecution of the instant applications. The subscribers have agreed that they will not sell, or otherwise

<sup>2</sup> These corporations will hereinafter be referred to as Arrow, Barnwell, Consolidated, Horton, McCarthy, Moran, Southeastern, and Transportation, respectively, and collectively as the carriers involved.

<sup>3</sup> The associated noncarrier companies involved are Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., herein called Barnwell Warehouse, Brown, Conger, and Southern Terminals, respectively. Barnwell Warehouse is an associated company of Barnwell, Brown and Conger of Horton, and Southern Terminals of McCarthy. Consolidated has three subsidiary companies, whose organization and operations are described in Appendix A of our report in Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, herein called the Transport Co. case. Only one of such subsidiaries, United-Arbour Express, Inc., herein called United-Arbour, is a motor carrier.

dispose of such stock for a period of 30 months from June 11, 1941, subject to certain exceptions in the case of all subscribers except Seymour.\* Applicant delivered 9,000 shares of its common stock to The Transport Company, of New York City; for engineering and accounting data with respect to the companies involved, which data were developed by The Transport Company in connection with proceedings described in the Transport Co. case. The Transport Company is controlled, through ownership of all its outstanding stock, by Kuhn, Loeb & Company, investment bankers of New York City.

Applicant's board of directors consists of nine persons, seven of whom are officers of the respective carriers involved.

13 One member represents The Transport Company, which has contracted to sell Arrow's stock, and the ninth member is Seymour. H. D. Horton, who owns all outstanding stock of Horton, is chairman of the board.

Applicant's balance sheet as of June 30, 1941, shows assets aggregating \$60,202, consisting of: Cash \$36,446, notes receivable \$15,620, and organization expenses \$8,136. Liabilities were: Capital stock \$60,202. Since the date of that balance sheet, applicant has issued 11,278 shares of common stock.

A general description of the organization and operations of each of the carrier and noncarrier companies involved in these applications, except applicant, is contained in Appendix A of the Transport Co. case, and the authority under which they operate is summarized in Appendix D of this report. The carriers operate principally as motor-vehicle common carriers of general commodities, over a network of regular routes, and together serve the principal points in Massachusetts, Rhode Island, Connecticut, New York, Eastern Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, and North Carolina. Their routes also extend from points in such area to Cleveland, Ohio, Pittsburgh, Pa., Nashville and Chattanooga, Tenn., Great Falls and McColl, S. C., and to New Orleans, La., and Pensacola, Fla., via Atlanta, Ga., and Montgomery, Ala., and pass through northeastern West Virginia. They operate approximately 3,300 units of revenue equipment, and the total highway miles covered by the regular routes of the respective carriers is 37,884. Certain of such carriers also operate over irregular routes in the same general territory covered by their regular-route operations, and McCarthy conducts certain contract-carrier operations. From

\* A subscriber other than Seymour may transfer all or part of his stock to one or more officers or employees of the company herein involved, excluding applicant, of which he is presently a stockholder, provided that only one transfer of each share of stock may be made, and no transfer may be made for any consideration greater than \$1 per share.



October 11, 1940, to December 31, 1941, Arrow's operations were conducted by The Transport Company under a lease of the former's operating rights and properties, at a rental equal to the net earnings derived from the operations, subject to certain adjustments.

Balance-sheet statements of the companies involved, as of April 30, 1941, are shown in Appendix A. A statement showing, to the extent available, their revenues and net income, before and after income taxes, for the years 1932 to 1940, inclusive; and the four-month periods ended April 30, 1940 and 1941, respectively, appears in Appendix B. In order that the result of operations by Arrow and its lessee may be presented on a basis comparable to that of the other carriers, financial data herein contained respecting Arrow disregards the existence of the aforementioned lease and treats the revenues and expenses of lessee, accruing during the period of the lease, as revenues and expenses of Arrow, whereas, technically, only the net income would be reflected on the latter's books.

#### TERMS OF PROPOSED TRANSACTIONS

Under separate agreements entered into between it and the stockholders<sup>5</sup> of the carrier and noncarrier companies involved, applicant would acquire all outstanding stock of each of those companies with the exception of Arrow and Horton. With respect to Arrow, applicant would acquire all of its common and 1,120 of 1,380 shares outstanding, of its preferred stock. Such preferred stock, having a par value of \$100 per share, is redeemable at \$106 per share plus accrued dividends, and that portion not purchased by applicant would be called for redemption either prior to or shortly after completion of the purchase. In addition to the common stock outstanding, all of which would be acquired by applicant, Horton has issued 2,666 shares of \$20-par-value employees preferred stock and has received subscriptions for 276 additional shares of such stock. The employees preferred stock, which is redeemable at par plus accrued dividends, would be called for redemption prior to consummation of the proposed transaction.

<sup>5</sup> The agreement respecting Arrow's stock was entered into with The Transport Company. The latter does not presently own the common stock which it undertook to sell to applicant, but under agreement with Arrow's common stockholders described in the Transport Co. case, which agreement has been amended subsequently in certain respects not here important, it had, in effect, an option to purchase such stock. We were apprised during the course of oral argument that the option has now expired and that there is some doubt whether The Transport Company will be in a position to deliver Arrow's stock to applicant as agreed. In the event the parties are unable to include Arrow in the consolidation as herein authorized, the transaction may nevertheless be consummated in other respects pursuant to our order herein and without necessity for further or modified authority.

Contracts respecting acquisition of the stock of the respective companies are substantially uniform. The contracting stockholders of each company would exchange their stock in such company for capital stock of applicant in an amount determined as follows: Preferred stock having a par value equal to 80 percent of the net worth, as of April 30, 1941, of the particular company involved, exclusive of any increase therein resulting from application of lower depreciation rates, as hereinafter mentioned; and common stock of a par value equal to an amount obtained by deducting from the company's net profit for the year ended April 30, 1941, a sum equal to 6 percent of the par value of the preferred stock received, and dividing the remainder by two. Fractional shares of one-half or more would entitle the parties to a full share, and a fractional share of less than one-half would be disregarded.

Net worth and net profit of a company for the purposes of the agreement were determined in accordance with formulae prescribed therein. Balance-sheet and income statement of the companies for the date and period indicated, prepared in accordance with our rules, were audited and adjusted pursuant to such formulae by a public accounting firm. The principal adjustments made were as follows: Intangible property items were eliminated; provision for income taxes was made on the basis of 1940 rates; tires on equipment at the beginning and end of the stated period were computed at 50 percent of cost; in computing net worth and net profit, fixed rates of depreciation were applied; reserves for uncollectible freight accounts receivable were established on a uniform basis; and the amount of certain expenditures specifically set forth in the respective contracts, which were made during the applicable period and were represented as being of a nonrecurring nature, less provision for income taxes, were added to the adjusted net profit of the respective companies. The total of such expenditures, after deduction for income taxes, applicable to each of the companies is set forth in the margin.<sup>7</sup> Deductions were also made from the net worth of Arrow and Horton in amounts equal to the call price, excluding accrued dividends, of the preferred stock of those companies which would not be acquired by applicant. A further reduction of \$12,000 was made in Arrow's net worth by reason of a payment to be made by it in that

<sup>7</sup> If applicant of such depreciation rates resulted in increasing the value of a company's tangible property, such increase would not entitle the vendor stockholders to additional preferred stock of applicant, but in lieu thereof they would receive common stock having a par value equal to 4 percent of the amount of increase.

<sup>8</sup> Arrow, \$30,556; Barnwell, \$6,073; Barnwell Warehouse, none; Brown, \$1,072; Conger, none; Consolidated, \$25,003; Horton, \$35,925; McCarthy, \$7,976; Moran, none; Southeastern, \$8,643; Southern Terminals, \$2,505; Transportation, none; total, \$117,753.

amount for cancellation of the liability of Arrow under an employment agreement with one of its officers. Consolidated's net worth was reduced by \$36,000, representing an expenditure made by it subsequent to April 30, 1941, for acquisition of 90 shares of its outstanding capital stock. Schedules showing the nature of all adjustments made are contained in the record. The net worth and net income of each of the companies involved for the date and period applicable, as reflected in their accounts and as adjusted for the purposes of determining the consideration, are shown in Appendix C of this report. That appendix also shows the amount of preferred and common stock which applicant would be obligated to issue in order to consummate the transactions.

In determining the consideration, exceptions were made in the following instances: (1) In the case of Barnwell Warehouse, a departure from the general provisions was made necessary because Barnwell Warehouse, in addition to other assets, owns a substantial portion of Barawell's stock and would receive therefor 1,107 shares of applicant's preferred and 15,472 shares of its common stock. The consideration for the stock of Barnwell Warehouse was fixed at 1,222 shares of preferred and 16,876 shares of common stock. As applicant, in acquiring control of Barnwell Warehouse, would, in effect, reacquire the stock received by that corporation, the net consideration for other assets of that company would be 115 shares of applicant's preferred and 1,404 shares of its common stock. (2) The stockholders of Moran would be entitled to 29,000 shares of applicant's common stock in addition to that deliverable under the general provisions of the contract. (3) No adjustments were made with respect to depreciation on Southeastern's revenue equipment, and, in lieu thereof, the contract provides for delivery to its stockholders of 2,000 additional shares of applicant's common stock. (4) The consideration for the stock of Transportation, which company's financial statements show deficits in net worth and income, was fixed at 5,335 shares of applicant's common stock.

17 The selling stockholders in each instance agreed to purchase at par a prescribed number of shares of applicant's common stock for the purpose of paying expenses in connection with the proposed transactions. This provision of the agreements has been executed.

A number of restrictions are imposed calculated to preserve the assets of the respective companies of which control would be acquired, such as limitations on salaries and allowances, expenditures out of the ordinary course of business, declarations of dividends, and disposition of assets. Amendments to the original agreements provide that the respective companies may distribute

by dividends, compensation, expense or otherwise, up to 20 percent of their net earnings for the year ended December 31, 1941, before provision for income taxes.

Upon closing of the transactions, applicant may withhold 15 percent of each class of its stock deliverable to the selling stockholders, to secure it against losses from undisclosed and contingent liabilities and other specified causes. Such stock may be withheld for three years but may be released sooner upon vote of two-thirds of applicant's board of directors. The contracts contemplate closing of the transactions within 10 days after approval by this Commission, but such time may be extended by agreement between applicant and a majority of the persons named as designees of the stockholders in the respective contracts.

Consummation of each contract is conditioned upon our approval of the particular acquisition involved and approval of acquisition of the stock of Barnwell, Consolidated, Horton, McCarthy, and Moran, and is further conditioned upon the Commissioner of Internal Revenue entering into a closing agreement, approved by the Secretary, Undersecretary, or an Assistant Secretary, of the Treasury, declaring that the contemplated transaction constitutes a tax-free reorganization.

As indicated, it is proposed that within one year from the date of acquisition of stock control, applicant shall take over all of the assets and assume all of the liabilities of the carriers involved, and shall become the sole operating company. Decision has not been reached as to whether the separate identities of the noncarrier companies would be maintained. With respect to Brown, tentative conversations have been had with other interests  
18 looking toward ultimate disposal of the company's stock.

#### BENEFITS OF PROPOSED UNIFICATION

Consolidation of these carriers into one unit would present many opportunities for greater economy and efficiency of operation. It would permit of more efficient and greater utilization of equipment, and corresponding reduction in consumption of motor fuel and tires. Many carriers are now finding it difficult to provide adequate equipment to meet the needs of the shipping public. Consolidation of the tonnage of the carriers would result in a higher load factor on vehicles used in over-the-road service, and there would be a large reduction in the number of trucks required for peddler runs and for pick-up and delivery service at terminal points. Extension throughout the proposed system, as planned, of scientific maintenance and safety programs, which the carriers involved have been unable to undertake to the extent which would be possible to applicant with the combined facilities and resources,

would add to the average life of equipment and result in more economical and safe operation and fewer road failures. The experience, and the garage and testing facilities of Consolidated and Horton, would be of material assistance in carrying out such a program. Vehicles could be readily shifted from one part of the system to another to meet peak demands and extraordinary needs, and by reason of that fact less reserve equipment in the aggregate would be required.

The 8 carriers involved presently maintain 179 separate terminals in 129 cities and towns. In one city 6 terminals are located, in another 5; in 11 cities there are 3 each, and in 19 cities 2 each. At some points the terminals would be consolidated and at others there would be a rearrangement of use; for instance, where two terminals are presently located, one might be used as an inbound and the other as an outbound terminal in order to reduce congestion and confusion in handling shipments. Consummation of the proposed transactions would result in substantial economies in terminal expense, and, through more efficient use of facilities, would expedite the movement of traffic. Additional terminals would be established at some points where there is presently insufficient traffic accruing to any one of the carriers to justify its maintaining such facilities. This would be of convenience to shippers in those localities. Some of the carriers, particularly Transportation, have been using poor terminal facilities because they have not had sufficient capital or credit to undertake construction of proper terminals, or to interest private capital in such construction. This has materially increased the cost of operation. With the resources available to applicant, it would be able to remedy that situation.

It is proposed to inaugurate through-trailer service between points where sufficient traffic is available to justify such service. This would reduce terminal costs, loss and damage claims, and the time in transit of freight now interchanged by from 6 to 36 hours. The carriers involved presently interchange a substantial amount of freight, between themselves and with other carriers. During the calendar year 1940 at New York City their interchange business amounted to \$997,600.

The Antitrust Division contends that common control or consolidation of these carriers is not necessary in order to obtain the benefits of through-trailer service, and that such service could be rendered by independent carriers through interchange of equipment without physical transfer of lading. While theoretically this may be true, from an operating standpoint there are many obstacles to such arrangements. Carriers are generally reluctant, and may refuse to turn over their equipment to others, particu-



larly when they need all available equipment for their own traffic. A carrier delivering equipment to another can never be sure when it will be returned. Complications arise because of the varying types, sizes, and unit costs of equipment used by the various motor carriers. In instances where equipment is interchanged, there is a tendency on the part of operating personnel of each carrier to deliver inferior equipment to the other. Disputes arise over questions of maintenance and damages incurred. Through move-

ments can be coordinated to better advantage and handled more expeditiously under common control, and the instant transactions would result in through movement of much freight which is now being interchanged. The fact that instances where independent motor carriers presently interchange equipment are relatively rare is itself evidence of the difficulties encountered in the making of satisfactory arrangements between them.

The consolidation would result in simplifying relations with shippers and public regulatory bodies. Tracing of shipments and settlement of claims would be facilitated. Congestion at shippers' platforms would be lessened. A reduction in the number of solicitors calling on shippers would result.

In addition to those previously referred to, economies could be effected through the greater purchasing power of applicant and its ability to obtain necessary financing at lower cost. Substantial savings could also be made in general and administrative, insurance, and communication expenses. Using the expenses incurred by the respective carriers for the year ended April 30, 1941, as a basis, it was estimated that economies could be effected as result of the unification in an amount aggregating \$1,600,000 in the expense items shown below. The aggregate expenses of these companies under the same items for the period indicated is also shown.

	Estimated savings	Expenses incurred
Insurance and safety expense	\$275,000	\$1,055,687
Sales, tariff, and advertising expense	150,000	734,893
Equipment maintenance and garage expense	450,000	2,273,442
Terminal expense	550,000	5,305,246
Administrative and general expense	175,000	1,844,916

\* This is the amount estimated as the saving which would be accomplished during the first year of unified operation. It is estimated that the saving in the second year would amount to \$700,000.

It was estimated that \$150,000 would be required for expenses of the central office, and that transportation expense would increase by \$125,000 because of increased cost of gasoline and oil.

Such higher cost of gasoline and oil would, of course, be equally applicable to the carriers operated independently.

While not denying that the transactions would result in substantial economies, the Antitrust Division takes the position

that, as no immediate rate reductions are proposed,\* accomplishment of such economies would be of no benefit to the public. Reduction in the cost of transportation service has been recognized by us in numerous decisions as being a matter affecting the public interest. The Supreme Court in *Texas v. United States*, 292 U. S. 522, held that the words "public interest" as used in section 5 have "direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities". Among other things, the act declares it to be the national transportation policy of Congress "to promote safe, adequate, economical and efficient service". Reduction in the cost of transportation service is properly reflected eventually either in lower rates than would otherwise be applied, or in improvements in service, both of which are in the public interest.

The consolidation upon the terms proposed would not result in any increase in aggregate fixed charges. Such charges of this nature as are assumed by applicant should prove less burdensome to it with the combined resources than to the individual carriers involved.

We find:

That the consolidation would result in improved transportation service, that through movement of freight would be simplified and expedited, equipment more efficiently utilized, terminal facilities improved, and handling of shipments reduced, relations with shippers and public regulatory bodies simplified, and safe operation promoted.

That the consolidation would result in substantial operating economies.

That assumption by applicant of the fixed charges of the carriers involved would not be inconsistent with the public interest.

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### EFFECT ON EMPLOYEES

As of April 30, 1941, the carriers involved employed a total of 5,816 persons. Applicant's officers assert that no employees would be dismissed as a result of the transaction, and the evidence shows that motor carriers are presently experiencing difficulty in obtaining sufficient skilled employees. Considering the increasing demand for transportation service and the evident shortage of experienced personnel, consummation of the transaction would not result in any substantial hardship to employees, through dis-

\* Among other things, applicant's brief states that the unification is designed: "To effectuate economies of operation so that present rates may be maintained, lowered or held within reasonable competitive limits in the rapidly rising market of supplies and labor."



placement or otherwise. Any minor detriment to employees would be offset by the advantages which indirectly would accrue to them from the lower operating costs and greater stability of applicant as compared with the respective carriers involved.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which we are informed represents between 80 and 85 percent of the employees of the carriers involved, opposed the applications at the hearing and on brief. However, at oral argument it expressed itself as in support of the applications, its change of position being explained as follows:

"Because of the fact that the overwhelming majority of the employees of the companies are members of our organization, and because of the expression by the company of an intention to enter into collective bargaining relationships affording protection to and conferring benefits upon our members and, finally, because of the present conditions in the country, we are satisfied in this case to accept and rely on the testimony of the parties and the Examiner's findings. We are of the opinion that labor will not be adversely affected by the granting of this application but, on the contrary, will be benefited thereby."

We find that consummation of the proposed transaction would not result in substantial injury to the carrier employees affected.

#### DUAL OPERATIONS

In numerous proceedings under section 5, it has been found that a carrier, or carriers, under common control, should not be permitted to transport the same commodities for one shipper as a contract carrier, and for another shipper as a common carrier, from and to the same points or in the same general territory.

See the Transport Co. case, and cases therein cited.

23 McCarthy has applications pending under the "grandfather" clause of section 209 (a), in Nos. MC-59866 and MC-59866 (Sub-No. 1), for a permit covering certain contract-carrier operations. Operations under the first application have been discontinued and its dismissal requested by McCarthy, and it will not be considered further herein. Under the second application McCarthy seeks a permit covering two separate operations, viz.: (1) Transportation of telephone and electrical equipment and supplies between points in Connecticut and Tottenville, N. Y., and (2) transportation of precious metals and supplies, and equipment used in connection therewith, between specified points in Connecticut, Massachusetts, New Jersey, New York, and Rhode Island. The parties have advised of their willingness that Mc-

Carthy cease the operations described under (1), and that its "grandfather" application be amended accordingly, and our findings will be appropriately conditioned. The other operation is a specialized service conducted with armored vehicles and would not be competitive with any of the common-carrier operations here involved. Continuance of such operation after consummation of the proposed transactions appears unobjectionable. However, final determination with respect to this question will be made when action is taken upon pending application for permit under the "grandfather" clause covering operating rights acquired pursuant to 5 M. C. C. 684.

United-Arbour, a wholly owned subsidiary of Consolidated, formerly operated in interstate or foreign commerce as a motor-vehicle contract carrier, and on March 29, 1938, in No. MC-44092, issuance of a permit to it was authorized covering the transportation of "such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business" between all points in an area in Connecticut bounded generally by New London, Torrington, Westport, and Long Island Sound. Consolidated and McCarthy are each authorized to transport the same commodities between many of the points served by United-Arbour. The instant application represents that such operation will be disposed of or discontinued by United-Arbour prior to consummation of the proposed transactions, and at the

24 hearing it was shown that operations by it had actually been discontinued. However, the parties have not requested cancellation of United-Arbour's operating authority; and, our findings will be appropriately conditioned to protect the situation.

We find:

That the authority herein granted for acquisition of control and consolidation of the properties of McCarthy is upon condition that, in the event control is acquired by applicant, McCarthy shall concurrently discontinue contract-carrier operations in interstate or foreign commerce in the transportation of telephone and electrical equipment and supplies, and its application in No. MC-59866 (Sub-No. 1) shall be considered amended to eliminate therefrom all claim to rights to conduct such operations.

That the authority herein granted for acquisition of control and consolidation of the properties of Consolidated is upon condition that, in the event such control is acquired by applicant, the operating authority granted United-Arbour in the order entered March 29, 1938, in No. MC-44092 shall be concurrently cancelled.

## CORPORATE SIMPLIFICATION

Many duplications exist in the operations of the carriers involved. Maintenance of separate corporations under common control, rendering substantially the same service, frequently has been condemned by us as wasteful. Transport Co.—Control—Arrow Carrier Corp., supra, and cases therein cited. Indeed, we would be unwilling to authorize acquisition of control of the carriers involved, if each were to continue its separate existence and duplicating operations under common control. However, such is not the authority herein sought. As previously stated, the instant application seeks authority to consolidate the operating rights and properties of all the carriers within one year after they are brought under common control. The acquisition of control through stock ownership, which would thus continue for not more than one year, is only a step in the consolidation plan. Applicant's officers and directors are of the opinion that such period of time would  
25 be required in order to establish complete consolidation on a sound basis without undue waste of assets and undue expense. Immediate consolidation of all the companies would result in substantial losses through expenses incurred for insurance and licensing, and it is planned to consolidate the properties with due regard to expiration dates of licenses and insurance in force. In order to license equipment most advantageously, some study of the placement of equipment throughout the system will be required. It is also pointed out that some of the carriers involved possess certain rights to operate in intrastate commerce and that applicant proposes to secure State authority for transfer to it of such intrastate operating rights.

Considering the foregoing, it appears that the best interests of the carriers would be served by authorizing the consolidation upon the terms proposed, which contemplate immediate acquisition of control through stock ownership and consolidation of the operating rights and properties within a period of one year thereafter. However, it may be well to emphasize that our findings and order herein authorize consolidation of all these properties upon terms involving prior acquisition of control, and that they are not intended to authorize acquisition of control without consolidation.

We find:

That there are substantial duplications in the operations of the carriers involved and, under such circumstances, continuance of their separate existences and operations under common control would be uneconomical; but that the proposed consolidation, by eliminating the wasteful duplications in operations and facilities, would rectify this situation.

That consolidation of the properties of the carriers involved into applicant upon the terms and conditions proposed, which contemplate acquisition of control through stock ownership as a step in such consolidation, and complete consummation of the consolidation within a period of not more than one year thereafter, would be consistent with the public interest.

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## COMPETITION

The Antitrust Division, and others opposing the applications, contend that the transactions would unduly restrain competition in the motor-carrier industry. As noted, the sum of the highway miles covered by the regular routes of the respective carriers involved is 37,884. After the consolidation, applicant would operate over 24,338 miles of regular routes, indicating a duplication between the carriers of 13,546 miles. As will hereinafter appear, the actual competition existing between the carriers involved is somewhat less than might be indicated by the duplicate highway mileage, by reason of restrictions in the service they are authorized to render and differences in the nature of the traffic handled.

Undoubtedly, substantial competition exists between certain of the carriers involved, and consummation of the instant transactions would eliminate such competition. However, such fact alone is not controlling. We are unable to agree with the argument of the Antitrust Division that it was the intention of Congress in enacting section 5 that we approve only such transactions as would not result in an "unreasonable" restraint of competition within the meaning of the antitrust laws, regardless of benefits that might result or the adequacy of remaining competition. Under such an interpretation, the provisions of paragraph 11<sup>10</sup> of section 5 would be rendered largely meaningless. In our opinion the Congress intended to place wholly within our judgment the granting or denying of authority for those transactions under section 5. The specific reference to the antitrust laws only emphasizes the Congressional intent that we should be empowered to approve transactions which otherwise would be violative of the antitrust laws, if we are convinced that the public interest would thus be best served. Stated differently, section 5 authorizes us to permit unifications which would, except for such

<sup>10</sup> This paragraph reads, in part: *"The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power . . . to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; any any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved . . . ."* [Italics supplied.]

approval, result in restraining competition contrary to the anti-trust laws, where the disadvantages of such restraint are overcome by other advantages in the public interest, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry. Determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain, and advantages which would result from the unification. The advantages which might reasonably be expected to result are discussed elsewhere in this report. The extent of competition existing between the carriers involved, and the competition afforded by other carriers which would not be affected by the unification, is discussed below. Although there is some territorial overlapping, such discussion, for convenience, will be divided into three parts, dealing respectively with the competitive situation in those portions of the territory here involved embraced within New England; the Middle Atlantic region (composed of New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and the District of Columbia), and the South. Unless otherwise indicated, the carriers herein referred to are motor-vehicle common carriers of property operating in interstate or foreign commerce.

**New England Region.**—Consolidated and McCarthy are competitive substantially throughout Connecticut, Massachusetts, and Rhode Island. In the southeastern section of Massachusetts, McCarthy is relatively strong and Consolidated relatively weak, while a reverse situation exists in southern Connecticut. Consolidated is the only one of the carriers involved operating between New York City and New England points.

Lists of carriers not involved in the proposed unification which operate<sup>11</sup> in the considered territory show 359 carriers, of which 103 are Class I carriers. A few of the principal competitors are:

*Operating revenues, 1940<sup>12</sup>*

Adley Express Company, Inc., New Haven, Conn.	\$1,750,000
Seaboard Freight Lines, Inc., New York, N. Y.	1,725,000
New England Transportation Company, Boston, Mass.	<sup>13</sup> 1,575,000
M & M Transportation Company, Somerville, Mass.	1,460,000
Stone's Express, Inc., Lynn, Mass.	1,468,000

<sup>11</sup> While the evidence clearly shows that many of the carriers included in the lists are actually operating at the present time, applicant's witnesses could not testify from personal knowledge that every one was operating. However, as reflected by our records, all carriers included are authorized to operate in the territory and between the points hereinafter indicated. With respect to Class I carriers, each filed an annual report with us disclosing operations during the year 1940, and it may be assumed that operations are still being conducted by them. The lists do not purport to show all of the carriers authorized to operate in the territory.

<sup>12</sup> The amounts shown are round figures. Information is not available to show the portion of the operating revenues of any carrier derived from operations in a particular area or between certain points.

<sup>13</sup> This figure represents revenues from freight operations; in addition, this carrier derived \$1,170,000 from passenger operations.



Adley Express Company, Inc., is authorized to operate as a common carrier of general commodities over a network of regular routes blanketing the States of Connecticut, Massachusetts, and Rhode Island and extending therefrom to Albany and New York, N. Y., and Philadelphia, Pa. It can serve every point in the New England territory served by Consolidated and McCarthy. New England Transportation Company, which is controlled by the New York, New Haven, and Hartford Railroad Company (Howard S. Palmer, James L. Loomis, and Henry B. Sawyer, trustees), has almost equal coverage in such territory, its routes extending therefrom to New York City and Poughkeepsie, N. Y. Its operations as a common carrier of general commodities are described in detail in New England Transp. Co., Common Carrier

Application, 12 M. C. C. 461. Seaboard Freight Lines, Inc., 29 a subsidiary of Keeshin Freight Lines, Inc., conducts operations of the same character over a network of regular routes extending to Syracuse, N. Y., on the west, Fitchburg and Boston, Mass., on the north and east, and Washington, D. C., on the south, with service to intermediate and numerous off-route points, including most of the principal points in the region under consideration. The operations of M & M Transportation Company and Stone's Express, Inc., are not so extensive as those just mentioned, but each of these carriers furnishes substantial competition in the considered territory. The former operates as a common carrier of general commodities between Boston, on the one hand, and Philadelphia, Pa., and Hudson, N. Y., on the other, serving, among other points, New York City, Springfield, Mass., Hartford, New Haven, and Bridgeport, Conn., points within 20 miles of Worcester, Mass., those within 30 miles of Providence, R. I., and those within 35 miles of Boston. It possesses additional authority to transport certain special commodities, including packing-house products from Boston to Baltimore, Md. Stone's Express, Inc., transports general commodities over regular routes between Boston and New York and between certain Massachusetts points, and over irregular routes between points in eastern Massachusetts.

One of the exhibits introduced in evidence analyzes the competition afforded by 294 carriers not involved in the proposed transactions, including 84 Class I carriers, over direct routes between numerous points in the territory in which Consolidated and McCarthy operate, 269 combinations of points being considered. Such exhibit excluded from consideration services rendered over irregular routes, or in the transportation of special commodities only, or general-commodity service through a combination of two or more carriers. The 25 combinations of points shown below

have been selected as representative of the 269 treated in the exhibit. Opposite each combination is shown the number of Class I carriers, of the 84 treated, which are authorized to afford competitive service between the points indicated:

Between	Class I Carriers
Albany, N. Y., and—	
Boston, Mass.	6
New Bedford, Mass.	2
New Haven, Conn.	3
New London, Conn.	3
Providence, R. I.	3
Springfield, Mass.	6
Boston, Mass., and—	
Amesbury, Mass.	8
Bridgeport, Conn.	22
Hartford, Conn.	25
New Haven, Conn.	25
New London, Conn.	13
North Adams, Mass.	7
Providence, R. I.	32
Springfield, Mass.	32
Torrington, Conn.	6
New Haven Conn., and—	
Fitchburg, Mass.	8
North Adams, Mass.	5
Providence, R. I.	18
New London, Conn., and—	
Fitchburg, Mass.	4
Greenfield, Mass.	3
Springfield, Mass.	4
Providence, R. I., and—	
Danbury, Conn.	5
North Adams, Mass.	3
Springfield, Mass., and—	
Bridgeport, Conn.	21
Brockton, Mass.	10

Another exhibit analyzes the competition afforded by 76 general-commodity carriers, including 39 Class I carriers, between various points in the considered New England territory, on the one hand, and New York City, Jersey City, and Newark, N. J., and Philadelphia, Pa., on the other. Among other combinations treated, it is shown that of the 39 Class I carriers considered, 28 operate between Boston and New York City, and 8 operate between Boston and Philadelphia.

The operating revenues in 1940 of 107 Class I motor carriers of property reporting to us, whose principal operations are in the New England region (composed of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), totalled \$40,082,627.<sup>14</sup> The revenues of Consolidated and McCarthy aggregated \$6,467,173 in 1940.

<sup>14</sup> Source of data, pursuant to stipulation of the parties. Revenues, Expenses, and Statistics of Class I Motor Carriers of Property, Statement No. Q-800, Year 1940, Interstate Commerce Commission, Bureau of Statistics. This compilation contains the following statement: "The total annual revenues of Class I carriers of property are probably less than half of the grand total for all motor carriers of property whose rates and service are subject to the jurisdiction of the Interstate Commerce Commission."



**Middle Atlantic Region.**—Consolidated and Moran are competitive between the principal points in New York State. None of the other carriers involved has any operations of importance in that State outside of the metropolitan area of New York City. Moran's routes are considerably more extensive than, and entirely duplicate, Consolidated's routes in this territory, and extend therefrom to Cleveland, Ohio, and to numerous points in northern Pennsylvania not served by any other of the carriers involved. Consolidated and Moran each operates from Binghamton, N. Y., to Philadelphia. Moran also has a direct route from Binghamton through Scranton, Pa., to New York City.

Lists of carriers which operate in the area served by Consolidated and Moran show 205 carriers, of which 60 are Class I carriers. Some of the principal competitors are as follows:

*Operating revenues, \$10*

Akron-Chicago Transportation Co., Inc., Akron, Ohio.....	\$347,000
Interstate Motor Freight System, Detroit, Mich.....	2,907,000
Keoshin Motor Express Co., Inc., Chicago, Ill.....	5,902,000
Niagara Motor Express, Inc., Syracuse, N. Y.....	610,000
Onondaga Freight Corp., Syracuse, N. Y.....	438,000

Akron-Chicago Transportation Co., Inc., operates as a general-commodity common carrier in Illinois, Indiana, Ohio, Pennsylvania, and New York. In New York a network of its routes covers practically all of the State west of Watertown, Utica, and Binghamton. The greater portion of the operations of Interstate Motor Freight System and Keoshin Motor Express Co., Inc., respectively, is in the Central and Middle Western States.

32 Each operates between principal points in New York State but does not serve as wide a territory therein as either Consolidated or Moran. Keoshin Motor Express Co., Inc., connects with its affiliate, Seaboard Freight Lines, Inc., at Syracuse and, in conjunction, the two carriers render through service to New York City and New England points. Niagara Motor Express, Inc., operates entirely within New York State as a general-commodity common carrier over regular routes, principally between Buffalo and Niagara Falls and Albany, via Rochester, Syracuse, and Utica, between Buffalo and Jamestown and Corning, between Rochester and Elmira, and between Syracuse and Binghamton, with service to numerous off-route points in that area. Onondaga Freight Corp. transports general commodities over regular routes extending from Buffalo to Boston, via Rochester, Syracuse, Utica, and Albany, and from Albany to New York, serving all intermediate points. It also has authority to transport a wide variety of specified commodities<sup>15</sup> over irregular routes from and to numerous points in the New York area.

<sup>15</sup> Paper, candles, chemicals, fruits, vegetables, canned and preserved foodstuffs, paint and related commodities, petroleum products in containers, and merchandise dealt in by retail food stores.

Taken from the standpoint of service between representative points in the area in which Consolidated and Moran compete, and considering only those carriers included in the lists referred to, which do not purport to be complete, the following shows the number of Class I carriers not involved in the proposed unification which operate over competitive routes between the points indicated:

<i>Between</i>		<i>Class I Carriers</i>
Albany, N. Y., and—		
Binghamton, N. Y. ....		11
Buffalo, N. Y. ....		18
Elmira, N. Y. ....		14
New York, N. Y. ....		26
Binghamton, N. Y., and—		
Buffalo, N. Y. ....		21
New York, N. Y. ....		20
Syracuse, N. Y. ....		18
Utica, N. Y. ....		13
23 Buffalo, N. Y., and—		
New York, N. Y. ....		20
Philadelphia, Pa. ....		19
Syracuse, N. Y. ....		24
Elmira, N. Y., and—		
Rochester, N. Y. ....		18
Syracuse, N. Y. ....		16
Philadelphia, Pa., and—		
Syracuse, N. Y. ....		17
Utica, N. Y. ....		16

The greater part of the competitive operations of Consolidated and Moran is within New York State, and competition from carriers operating solely in intrastate commerce is of greater importance than in other areas involved. Of Moran's revenues, a large percentage accrues from transportation of freight moving in intrastate commerce. Considerable competition is also afforded on traffic moving in interstate commerce, by carriers which operate physically within New York State, under the exemption from the certificate requirements of the act contained in the second proviso of section 206 (a).

Some competition, although of less relative importance, exists between the carriers involved in portions of the Middle Atlantic region other than New York State. Barnwell, Horton, and Southeastern operate in this territory but are principally concerned with traffic moving between points therein and the South.

Barnwell's routes extend northward to Scranton, Pa., and New York City. On its main route between Washington and New York, via Baltimore and Philadelphia, it is authorized to serve all intermediate and certain off-route points. Service to points on its other routes in this region is generally restricted to traffic originating at or destined to points in Virginia or south thereof. At Harrisburg, Reading, and Allentown, Pa., it is restricted to

delivery of traffic originating at New York. Southeastern's routes also extend to Scranton and New York, but it may not serve any point in this region except on traffic originating at or destined to Roanoka, Va., or points south thereof. Horton's routes extend northward in this area to Pittsburgh, Pa., Scranton, and New York, and it is authorized to serve without restriction Washington, Baltimore, a few other Maryland points, New York City, a number of Pennsylvania points including Philadelphia, Trenton, and New Brunswick, N. J., and points in northern New Jersey in the vicinity of New York City; otherwise, it is generally restricted to traffic moving to or from points south of the Potomac River. Consolidated's routes extend from New York to Philadelphia and Asbury Park and Atlantic City, N. J. With respect to such New Jersey points, it is not competitive with any of the other carriers involved. Arrow operates between the metropolitan area of New York City and numerous points in eastern Pennsylvania, but does not serve Philadelphia. Its routes extend northward to Binghamton, N. Y. Between the latter point and New York City it is in competition with Consolidated and Moran, and certain of its other routes are paralleled by those of Barnwell and Horton. Arrow is primarily concerned with traffic moving between the metropolitan area of New York and Pennsylvania points. It is the only one of the carriers involved having intrastate rights in Pennsylvania. It would be valuable to the unified operation as a feeder and connecting line.

Numerous carriers operate in this territory. An incomplete list of those competing with Arrow shows 148 carriers, of which 44 are Class I carriers. Many of those included in the lists of carriers operating in New York also operate in this area. Some of the carriers whose principal operations are in the area are:

	<i>Operating revenues, 1940</i>
The Davidson Transfer & Storage Co., Baltimore, Md.	\$1,576,000
Horiacher Delivery Service, Inc., Philadelphia, Pa.	1,062,000
Motor Freight Express, Inc., York, Pa.	799,000
Richards Motor Freight Lines, Scranton, Pa.	1,102,000
York Motor Express, York, Pa.	1,302,000

Motor Freight Express operates as a common carrier of general commodities throughout most of the area here under consideration, its routes extending from New York on the north to Pottsville and Harrisburg, Pa., on the west, and Washington on the south. York Motor Express conducts similar operations in the same general territory. Richards Motor Freight Lines conducts operations of the same character over a network of regular routes covering the eastern Pennsylvania points served by the carriers here involved, as well as the principal points served by Moran in New York State. Davidson

transports general commodities over regular routes extending from Washington to New York, via Philadelphia, and over irregular routes between its terminal areas of New York, Philadelphia, Baltimore, and Washington, on the one hand, and on the other, points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and northern Virginia. Horlacher Delivery Service, Inc., conducts similar operations in the territory extending from Norfolk and Richmond, Va., to New York City. It serves substantially, if not all, points in Delaware and eastern Pennsylvania served by the carriers involved. Other carriers whose principal operations are in this territory and are described in Appendix A of the Transport Co. case are: Branch Motor Express Company, Kirby & Kirby, Inc., The Middlesex Transportation Company, Miller Transport Co., The Motor Haulage Company, Inc., New York and New Brunswick Auto Express Company, Freedman Motor Service, Inc., Pyramid Motor Freight Corporation, Shein's Express, Inc., and Smith and Solomon Trucking Company.

The following shows the number of Class I carriers, of those named in the lists referred to, and not involved in these transactions, which operate over competitive routes between the representative points indicated:

<i>Between</i>		<i>Class I Carriers</i>
New York City and—		
Allentown, Pa.	.....	28
Baltimore, Md.	.....	24
Harrisburg, Pa.	.....	24
Philadelphia, Pa.	.....	29
Scranton, Pa.	.....	24
Sunbury, Pa.	.....	19
Washington, D. C.	.....	22
York, Pa.	.....	21
36 Baltimore, Md., and—		
Harrisburg, Pa.	.....	19
Scranton, Pa.	.....	13

The operating revenues in 1940 of 283 Class I motor carriers of property reporting to us, whose principal operations are in the Middle Atlantic region totalled \$97,449,156. The operating revenues in 1940 of Arrow and Moran, which are the only carriers of those involved whose principal operations are in this region, totalled \$4,282,861.

**Southern Region.**—The carriers involved whose principal operations are in the Southern region are Barnwell, Horton, Southeastern, and Transportation. Because of restrictions in its operating authority, Southeastern is only slightly competitive with any of the other carriers involved. While its routes are generally paralleled by those of Barnwell and Horton north of Roanoke, Va., it may transport only traffic originating at or destined to Roanoke

or points south thereof. Aside from Roanoke, which is served by Barnwell, the only point south thereof on Southeastern's routes served by either Barnwell or Horton is Winston-Salem, N. C., which is served by Southeastern from the west and by Barnwell and Horton from the south and east. Southeastern's routes parallel those of Transportation between Bristol, Va., and Kingsport, and Johnson City, Tenn., 24 and 25 route miles, respectively. Transportation's operations south of Atlanta, Ga., and from points in North and South Carolina to points in Tennessee are not competitive with those of any of the carriers involved. It competes with Horton between Atlanta and Charlotte, N. C. Between Charlotte and Great Falls, S. C., and other points in North Carolina, including Burlington, Greensboro, and Winston-Salem, its operations are competitive with Barnwell and Horton, and it competes with Barnwell between Asheville, N. C., and Charlotte and Winston-Salem. The routes of Barnwell and Horton are generally parallel from Great Falls, S. C., on the south, to New York City and Scranton, on the north. Barnwell's routes between Greensboro, N. C., and Roanoke, Va., and between McColl, S. C., and Wilmington, Del., via Norfolk, Va., and the eastern shore of Maryland are not duplicated by those of any of the other carriers involved.

Lists of carriers operating in this territory, which, as in the case of the other lists referred to, do not purport to be complete, show 289 carriers, of which 67 are Class 1 carriers. These lists include some carriers competing with the southern carriers north of Washington only. Some of the principal competitors are:

	Operating Revenues, \$90
Akers Motor Lines, Inc., Gastonia, N. C.	\$923,000
Atlantic States Motor Lines, Inc., High Point, S. C.	729,000
Brooks Transportation Company, Inc., Richmond, Va.	1,370,000
Harris Brothers Transfer Company, Charlotte, N. C.	518,000
The Mason & Dixon Lines, Inc., Kingsport, Tenn.	1,018,000
Roadway Express, Inc., Akron, Ohio.	2,224,000

Akers Motor Lines, Inc., operates as a common carrier of general commodities over irregular routes. It is authorized to transport such commodities between Gastonia, N. C., and points within 25 miles thereof, on the one hand, and points within 100 miles of Atlanta and 5 other Georgia points, on the other, and between said Georgia points and points in North and South Carolina, on the one hand, and, on the other, all points in New Jersey, Connecticut, Rhode Island, Massachusetts, and the District of Columbia, numerous points in Maryland, Delaware, Pennsylvania, and New York (including New York City); and points within 25 miles of Akron, Ohio. Atlantic States Motor Lines, Inc., conducts similar operations over a network of regular routes extending from Co-



lumbia, S. C., and Atlanta, on the south, and Asheville and Roanoke, on the west, to New York City. It also transports general and special commodities over irregular routes, generally between southern points, on the one hand, and points in the Middle Atlantic States, on the other.

Brooks Transportation Company, Inc., transports general commodities over regular routes, generally parallel to those of Barnwell and Horton, between Winston-Salem and Greensboro, N. C., and Roanoke, Va., on the one hand, and New York City, on the other. Harris Brothers Transfer Company conducts operations of the same character over regular routes between Charlotte and New York over several routes, with service to a number of Pennsylvania points, including Philadelphia. The Mason & Dixon Lines, Inc., competes with most of the operations here involved between Atlanta and New York, its routes extending from Atlanta and Charlotte on the south to Scranton and New York City on the north. Roadway Express, Inc., operates as a common carrier of general commodities in 24 States. So far as concerned here, it operates from Columbus, Ga., to New York City, via Atlanta, Greenville, S. C., Charlotte, Richmond, Baltimore, and Philadelphia. It also conducts irregular-route operations in North and South Carolina. Other carriers whose principal operations are in this territory and are described in Appendix A of the Transport Case are: Hampton Roads Transportation Company, Mundy Motor Lines, Rutherford Freight Lines, Incorporated, Super Service Motor Freight Company, and The Wright Line.

The following shows the number of Class I carriers, of those named in the lists referred to and not involved in the proposed transactions, which operate over competitive routes between representative points in the Southern region, and between points therein and certain points outside of such region. Service is considered only between points served in common by two or more of the carriers involved; i. e., only in those instances where there will be a lessening of competition.

<i>Between</i>		<i>Class I carriers</i>
Asheville, N. C., and—		
Burlington, N. C.	.....	8
Charlotte, N. C.	.....	11
Atlanta, Ga., and—		
Burlington	.....	7
Charlotte	.....	10
Burlington and—		
Great Falls, S. C.	.....	7
Fayetteville, N. C.	.....	14
Charlotte and—		
Harrisburg, Pa.	.....	11
Lynchburg, Va.	.....	13
New York, N. Y.	.....	13

<i>Between</i>		<i>Class I carriers</i>
39	Charlotte and—Continued.	
	Philadelphia, Pa.	13
	Richmond, Va.	17
	Seranton, Pa.	9
	Washington, D. C.	14
	Winchester, Va.	11
	Lynchburg and—	
	New York	8
	Richmond	10
	Washington	9
	Richmond and—	
	Harrisburg	11
	New York	16
	Washington	20
	Romoke and—	
	Harrisburg	7
	New York	8
	Seranton	4
	Washington	10
	Winchester	10

The operating revenues in 1940 of 92 Class I carriers of property reporting to us whose principal operations are in the Southern region (composed of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) totalled \$49,051,190. The revenues in that year of Barnwell, Horton, Southeastern, and Transportation totalled \$7,955,230.

General.—The foregoing clearly shows that if the proposed transaction is consummated, there would remain ample competitive motor-carrier service throughout the territory involved. In addition, all of the principal points and many others are served by one or more rail carriers. Competition is also afforded by motor-vehicle contract carriers, and by carloading and forwarding companies. The tabulations showing service between representative points include only carriers rendering single-line service, although effective competition frequently is afforded such carriers by combinations of two or more carriers through interchange. Nor do the

tabulations reflect competition of overhead operations. For example, Spector Motor Service, Inc., which operates between many points in the Middle Atlantic and New England regions, on the one hand, to points in the Central States, on the other, is not included in the tabulations although actually operating between many of the points shown.

A detailed analysis, like the foregoing, of remaining competition between representative points in the territory, contained in the proposed report, is characterized by the Antitrust Division as irrelevant in that it relates only to the existing operations of the individual carriers involved and does not discuss motor-carrier competition which would be afforded to the proposed consolidated operation. The evidence introduced by applicant, and the foregoing analysis, are intended to show that, as to those points be-

tween which two or more of the carriers involved operate and between which, therefore, the transaction would result in a lessening of competitive service, adequate competition would remain. As to those points between which only one of the carriers involved operates, it could not well be said that the consolidation would eliminate competition; it would merely result in replacing the present operator with applicant. Much of the argument that the consolidation would result in undue restraint of competition is based on the fact that there would be no other single carrier authorized to operate throughout the territory in which applicant could operate, in particular, between Boston and New Orleans. The evidence shows that service between these extreme termini is not contemplated by applicant, nor would it be economically feasible under present conditions and rate structures, particularly because of the availability of substantially cheaper water transportation. However, assuming such service were to be rendered by applicant, the mere fact that the consolidation would result in making available to the public a new service, different from any presently existing, may not properly be objected to on the ground that applicant would have a "monopoly" of such service. If such contention were

valid we would be required to disapprove many applications both under section 5 and section 207, for extension of operations to points not already enjoying similar service, on the ground that such an applicant, being the only operator, would have a monopoly of such service.

It seems that protestants are more apprehensive as to the possible indirect effect of the consolidation upon remaining competing operators than the direct elimination of competition between the carriers involved. They allege that the consolidation would bring into being the largest common carrier of property by motor vehicle in the United States, which appears to be true at least from the standpoint of revenues, and contend in effect, that applicant, because of its extensive route coverage and large total revenues, would be so dominant in the territory that it would smother competition of remaining independent motor carriers. Experience has not demonstrated that such result would be likely to follow. There are a number of large property motor-carrier systems presently in existence, most of which operate in the Middle Atlantic and Central States, notably the Keeshin system, Interstate Motor Freight System, and U. S. Truck Lines system. There is no indication that anything approaching a monopoly has resulted in that territory from the formation and operation of those systems. Considering the great number of motor carriers presently operating, the small amount of capital required to enter the motor transportation field, and advantages in certain respects which smaller motor carriers

have over larger ones through their more intimate relations with shippers and ability to render a more personalized service, it would seem that monopoly is little to be feared at this stage of the development of the trucking industry. It is not necessarily true that applicant would be able to obtain any greater portion of the available traffic than the carriers involved now handle. As shown by the testimony of shipper representatives, there is a tendency among many shippers to divide traffic among competing lines. In the opinion of the general manager of one of the intervening motor carriers which competes with Barnwell and Horton, his company would be in a better position from a solicitation standpoint if those carriers were merged.

42 It is also argued that the combined volume of business of the carriers involved would give applicant such great bargaining power with connecting motor carriers for interline business that it could secure not only the larger portion of the traffic, but could demand as exchange the premium or higher-rated freight; and that there would be created in applicant a "bottle neck" through which, in many cases, shippers must send their traffic. Each of these contentions is based upon an incorrect premise that applicant would have the only available service between strategic points, and that independent lines would be forced to interchange with it. As has been shown, a carrier would have a choice of several carriers other than applicant with which to make interchange arrangements, and if not treated fairly would, no doubt, favor such other carriers. The bargaining power of applicant would necessarily have to be spread among numerous connecting lines, and in the aggregate would be no more, and probably would be less, than that of competing lines. Applicant would have little to gain and much to lose by adopting an unreasonable policy with respect to interchange, and its officers have expressed their intention of maintaining existing joint-rate and through-route arrangements.

It is also contended that the consolidation would result in diversion of interchange traffic, presently delivered by the carriers involved to other connecting lines, to such an extent as to affect these lines adversely. It is no doubt true that applicant would haul unroute freight to destination, when possible to do so; in other words, it would not short-haul itself. However, the traffic it might divert from connecting carriers probably would be equalized, to a large degree at least, by traffic which would be diverted from it to other lines. To illustrate, a carrier operating between Boston and New York and presently interchanging with Barnwell at the latter point for southern destinations, after consummation of the proposed consolidation, would be likely to de-

liver traffic controlled by it to some independent line rather than to applicant, which would be a competitor of such delivering carrier.

43 The large size of a motor carrier which would result from a unification alone does not constitute sufficient ground for denial of an application. Application of such a policy would tend to freeze the motor-carrier industry at its present level. Such transportation, compared with rail and water transportation, is still in its infancy, and arbitrary restrictions upon its natural development into larger units solely by reason of comparative size would not be in the public interest. There are many thousands of motor carriers of property subject to our jurisdiction. Many of these are very small, and small motor carriers are necessary and have a definite place in the industry. On the other hand, it would seem that larger motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry. The legislative history of section 5 indicates a clear Congressional intent to encourage unifications, particularly of railroads. In view of the national transportation policy, as declared in the act, it can not be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should not also be permitted to grow through consolidations, or that the mere size of the consolidated company should, of itself, be sufficient to warrant denial. Considering the much greater number of motor carriers of property and their size as compared with railroads generally, the need for unification in the trucking field is at least as great as in the case of railroads, which have had many years of development and now comprise comparatively few systems.

At the conclusion of the hearing, the Antitrust Division moved that all of the motor-vehicle common carriers of property interchanging freight in the metropolitan area of New York, Baltimore, and Philadelphia, including those lines involved in the proposed unification as well as others, be required to furnish us information showing the tonnage received from and delivered to connecting carriers in New England and New York State for the last six months of 1910. Aside from the doubtful pro-

44 priety of entering such a general order in a proceeding of this nature, and the fact that such order would place a great physical and financial burden upon carriers not parties to this proceeding, it is not believed that such information is essential to a determination of the issues involved. Accordingly, the motion is denied.

**Railroad Relationship.**—Acquisition by applicant of control of Arrow would result in Kuhn, Loeb & Company, through The



Transport Company, obtaining a substantial interest in applicant. Kuhn, Loeb & Company is represented on the boards of directors of several railroads operating outside of the territory here involved, and for many years it has been banker for The Baltimore and Ohio Railroad Company and The Pennsylvania Railroad Company, each of which operates in this territory. There is no allegation that it controls any railroad, but, because of its relationship with railroads, it is contended that possession by Kuhn, Loeb & Company of a financial interest in applicant would be contrary to the public interest, would result in restraining competition between the carriers involved and railroads, and that applicant would be affiliated with a railroad within the meaning of section 5 (6).<sup>16</sup> On behalf of the Secretary of Agriculture, it was stated that he would not have opposed the applications were it not for the participation of Kuhn, Loeb & Company.

Contrary to the contention of protestants, it is clear that Kuhn, Loeb & Company did not sponsor the proposal now under consideration. Agreements were executed respecting all of the other carriers while negotiations respecting acquisition of  
 45 Arrow's stock were under way and before any final agreement thereon had been reached. Consummation of each of the contracts is specifically conditioned upon approval by us of acquisition by applicant of control of Barnwell, Consolidated, Horton, McCarthy, and Moran, but Arrow is not included as one of the essential companies. Indeed, as previously indicated, it may be that the parties will be unable to include Arrow in the transaction as finally consummated.

If the proposed transactions were consummated, Kuhn, Loeb & Company indirectly would own 6,877 shares of applicant's preferred stock and 67,167 shares of its common, which, after issuance of the 15,000 shares of preferred stock proposed to be offered the public, would be 13.00 and 9.53 percent, respectively, of the preferred and common stock outstanding. While no one interest would own a majority of applicant's stock, the Horton interests would more nearly approach control than any other. H. D. Horton, with members of his family, would own 14,917 shares of applicant's preferred stock and 267,873 shares of its common, or 28.18 and 38.01 percent, respectively, of that outstanding. The present stockholders of Consolidated, in the aggregate, would also have

<sup>16</sup> Section 5 (6) reads as follows:

"For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier."

greater voting power than Kuhn, Loeb & Company. Applicant would not be indebted to it financially, and it would have only one of nine members on applicant's board of directors. Its inexperience in the motor-carrier industry, contrasted with the experience of other directors and principal stockholders of applicant, most of whom are now active heads of the carriers involved, makes it improbable that Kuhn, Loeb & Company would have more than a nominal voice in the formulation of operating policies, and clearly it would not have the power to control applicant. Protestants' allegation does not specify the particular railroad or railroads with which it is believed applicant would be affiliated as a result of the participation of Kuhn, Loeb & Company. It is argued that the fact that no railroads opposed the applications lends support to protestant's contention in this regard. We do

46 not agree that such an inference may properly be drawn merely from the absence of railroad opposition. The circumstances present here are not such as to make it reasonable to believe that the affairs of applicant would be managed in the interest of any railroad, and we conclude that applicant is not and would not be affiliated with a railroad as a result of consummation of these transactions as proposed. Compare Cleveland, Columbus & Cin. Highway, Inc.—Purchase—Reo, 36 M. C. C. 325, and National Freight Lines, Inc.—Purchase—Mason, 15 M. C. C. 687.

One of the reasons advanced in opposition to the applications is that there is nothing to prevent Kuhn, Loeb & Company from subsequently acquiring control of applicant. There is no circumstance here which leads us to believe that such acquisition is contemplated. Certainly, the mere possibility that this might occur at some future time would not warrant denial of the applications. If such reasoning were adopted, no unification would be approved for fear that a different person or persons might obtain control of the unified operation at some future date, which control might be contrary to the public interest. To the extent a future change in control or management of applicant might result in control or management in a common interest with another carrier, whether rail, motor, or water, the provisions of section 5 (4) and our powers under section 5 (7) are ample to protect the situation.

We find:

That the proposed transactions would not result in undue restraint of competition.

That applicant is not, and upon consummation of the transactions as proposed, would not be, affiliated with any railroad.

## ISSUANCE OF SECURITIES

Consummation of the contracts for acquisition of control of the carrier and associated noncarrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having a total par value of \$4,553,543. Of these shares, 1,107 of preferred and 15,472 of common, issuable to Barnwell Warehouse, would be subsequently cancelled, thus leaving outstanding 37,942 shares of preferred and 633,171 shares of common stock, having a total par value of \$4,427,371. As of April 30, 1941, the aggregate net worth of the corporations involved, according to their books, was \$5,077,992. After making adjustments as provided in the contracts, the aggregate net worth would be \$4,900,243.

Authority is sought by applicant under section 214 to issue (1) stock as set forth above to consummate the contracts for acquisition of control; (2) necessary common stock, from time to time as required, in conversion of its preferred stock, and (3) 15,000 shares of preferred stock, to be offered and sold to the public, the proceeds of which would be used for working capital and other corporate purposes.

Holders of applicant's common and preferred stock would be entitled to one vote for each share held. The preferred stockholders would be entitled to cumulative dividends of 6 percent per annum before any dividends are paid on the common stock and, in the event of liquidation, to \$105 per share plus accumulated dividends before distribution of any amount to common stockholders. At the option of the holders, preferred stock is convertible into common stock, as follows: During the first three years from date of issue, 4 of common for 1 of preferred; during the next three years,  $3\frac{1}{3}$  for 1; and thereafter, 3 for 1. Applicant may redeem the preferred stock within 5 years from date of issue at \$110 per share, and thereafter at \$105 per share, plus accumulated dividends in each instance.

The highest conversion rate provided for is four shares of common for one of preferred. At that rate, to convert all preferred stock proposed to be issued, 54,049 shares, would require 216,196 shares of common stock. However, it is unnecessary to authorize issuance of common stock to convert the preferred stock deliverable to Barnwell Warehouse, which would be subsequently cancelled. Eliminating any amount for such purpose, the maximum number of shares of common stock required for conversion purposes would be 211,768, and the total amount of common stock

for which authority would be required would be 860,411 shares.<sup>17</sup>

48 The 15,000 shares of preferred stock proposed to be offered to the public would be sold at not less than par. No commitment with respect to such sale has been made and no underwriting agreement entered into. It is proposed that any underwriting agreement entered into shall be subject to our approval, and the findings will be conditioned accordingly. Sale at par of such stock would produce \$1,500,000, which would be used to increase working capital, to purchase equipment, and to pay outstanding obligations. As of April 30, 1941, the aggregate current assets of the companies involved were only slightly in excess of the current liabilities. Each of the carriers at present lacks adequate working capital, which is attributable, in part at least, to the recent large increase in their volume of business. The addition of \$1,500,000 to applicant's working capital is necessary to meet its needs for such funds when the consolidation is effected. The annual dividend requirement upon all preferred stock to be issued, excluding that issued to Barnwell Warehouse and subsequently retired, would be \$317,652, which is about 42 percent of the companies' aggregate net income, after provision for income taxes, in 1940, and about 33 percent of such net income for 1939.

Pro forma balance sheet statement of applicant as of June 30, 1941, giving effect to consolidation into itself of the companies involved<sup>18</sup> and to the issuance of proposed securities, and reflecting elimination of all intangible items presently carried on the companies' books, shows assets<sup>19</sup> aggregating \$10,950,946, consisting of: Current assets \$4,263,616, including cash \$1,956,858, working funds \$68,693, accounts receivable, less reserve for uncollectible accounts, \$1,372,332, and material and supplies \$667,172; tangible property, less depreciation, \$5,516,399; organization 49 expense \$107,136;<sup>20</sup> investment securities and advances \$176,204; and deferred debits \$887,591, principally prepayments \$885,528. Liabilities would be: Current liabilities \$2,827,373, chiefly accounts payable \$1,243,959 and taxes accrued \$726,186; advances payable \$127,111; equipment obligations \$867,336; other long-term obligations \$397,406; deferred credits \$62,353; reserves

<sup>17</sup> The section 214 application, as amended, seeks authority to issue 860,411 shares of common stock. Such request is apparently based upon a miscalculation, as the maximum requirement, before elimination of common stock for conversion of preferred stock issuable to Barnwell Warehouse, would be 864,839.

<sup>18</sup> This balance sheet statement includes assets and liabilities for the associated non-carrier companies, in total amount \$1,097,109, as reflected in Appendix A.

<sup>19</sup> For the purpose of this balance sheet, valuation of assets was adjusted in accordance with the contract provisions previously described. The total value would be slightly higher if book values were used. Assets and liabilities of the companies involved are as of April 30, 1941.

<sup>20</sup> Represent \$8,136 expended as of June 30, 1941, \$9,000 for data purchased from The Transport Company, and \$90,000 estimated additional expenditures for prosecution of instant applications and completion of applicant's organization.

\$197,644, including injuries, loss and damage reserves \$75,283, and reserve for income taxes \$108,673; capital stocks—preferred \$5,294,200 and common \$704,651;<sup>21</sup> and unearned surplus \$472,872.

The foregoing reflects a capitalization of \$7,263,593, comprised of capital stock \$5,998,851, and equipment and long-term obligations \$1,264,742. The following assets appear in support of such capitalization:

Cash.....	<sup>22</sup> \$1,956,858
Material and supplies.....	667,172
Tangible property.....	5,516,399
Total .....	8,140,429

The total shown is \$876,836 more than applicant's above-stated capitalization.

The National Industrial Traffic League does not oppose the applications but expresses some doubt whether the proposed method of financing is sound. It is apprehensive that applicant might subsequently increase the recorded value of its capital stock (which, it is represented, is permissible under the laws of Delaware under which applicant was organized), and that such higher recorded value would be relied upon by the public and given weight in future rate proceedings. We have adequate powers under the act to prevent a write-up of applicant's capital stock accounts.<sup>23</sup>

50 It is also argued that applicant's common stock might subsequently find its way into the hands of the public at a price greater than par and, in this connection, the instant proposal is compared to that disapproved in the Transport Co. case. However, in the instant case applicant would assign no value to its common stock, other than par value, and is not proposing to sell any of such stock to the public. Thus, the situation is essentially different from that existing in the Transport Co. case, as illustrated by the following excerpt from our report in that proceeding:

"The par value of the securities would not exceed the value of such [tangible] assets, but we cannot ignore the fact that it is proposed, and it would be necessary in order to finance the transactions, to sell the common stock at prices 20 or more times the par value."

<sup>21</sup> Includes 71,480 shares already issued, of which 11,278 shares of common stock were issued by applicant subsequent to June 30, 1941.

<sup>22</sup> Includes proceeds from sale of \$1,500,000 preferred stock.

<sup>23</sup> Our Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property provides:

"No entries recording changes in the par value of stocks with par value; the stated value of nonpar stocks having a stated value; or the recorded value of nonpar stocks without stated value shall be made in any account for capital stock without approval of the Commission."



Considering the fact that the par value of the common stock was arbitrarily fixed, without regard to actual or book value of the consideration which would be received therefor, and the great difference between the par values of the common stock which would be issuable and the preferred stock which would be retired, respectively, upon conversion of the latter into the former, it is our opinion that applicant's common stock should be without par value. If par-value common stock were issued, as proposed, upon conversion at the highest rate provided, for each share of preferred stock cancelled, par value \$100, 4 shares of common, par value \$4, would be issued. The difference of \$96 presumably would be credited to surplus. Thus, using the foregoing pro forma balance sheet as a basis, if all the preferred stock were converted at that rate, applicant's capital stock account would be reduced from \$5,998,851 to \$916,419. The balance sheet would then create a misleading impression with respect to original investment. Applicant's counsel stated at oral argument that it has no objection to changing its common stock to stock of no par value, and our findings will be conditioned accordingly. In authorizing issuance of these securities, our findings contemplate accounting in

accordance with our Uniform System of Accounts for 31 Class I Common and Contract Motor Carriers of Property, and that, as recorded on the books of applicant after consummation of the consolidation, no allowance shall be reflected for intangible property of the carriers involved.

As noted, applicant has already issued 71,480 shares of par-value common stock and in order to prevent the creation of two classes of common stock, which appears undesirable and contrary to the intent of the parties, the authority herein granted will include authority for applicant to issue 71,480 shares of no-par value common stock to replace the par-value common stock outstanding.

The Antitrust Division contends that the preferred stock to be offered to the public should be sold pursuant to competitive bids. Considering the type of securities involved, the newness of the enterprise, and the unfamiliarity generally of the public with motor carrier securities, there is grave doubt whether marketing of the securities through competitive bids would be feasible. It is believed that the condition imposed, requiring approval by us of any agreement entered into for the disposition of the securities, will adequately protect the situation.

The holder of one share of common stock would have equal voting power with the holder of a share of preferred stock, each being entitled to vote the stock cumulatively. Question arises as to whether the great disparity, from the standpoint of recorded,

value, between the voting rights of the preferred and common stock proposed to be issued would be consistent with the public interest. It has been found that concentration of control of a carrier in the hands of persons having a relatively small investment therein is not always compatible with the public interest.<sup>24</sup> It must be remembered, however, that the recorded value of applicant's common stock would not, and does not purport to, represent the amount of investment, but rather an undivided interest in applicant, undefined in amount, derived from the contribution to applicant, by the persons receiving such stock, of going businesses. It should also be recognized that, in view of the preferential

52 treatment of preferred stockholders, common stockholders are ordinarily entitled to control. Upon the basis of the proposed stock issue, our findings will be conditioned to assure the preferred stockholders of the power to control applicant in the event dividends become in arrears for two consecutive years, such control to continue until the arrears are paid.

Upon consolidation into itself of the companies involved, applicant would be required to assume all of their liabilities. Certain of these companies have outstanding securities with respect to which assumption of obligation by applicant would require our authority under section 214. It is probable that some of these securities will be liquidated prior to actual consolidation. Applicant represents that, within the one-year period prior to consolidation, it will make appropriate application for requisite authority under section 214 to assume obligations with respect to any securities of the companies involved. In authorizing consolidation of these properties, our findings are not to be construed as prejudging any issues which may arise with respect to assumption by applicant of obligation in respect of securities of the liquidating companies within the meaning of section 214.

We find:

That an increase in applicant's working capital of \$1,500,000 is necessary to place it upon a sound financial basis upon effecting the consolidation.

That applicant's capitalization would not be excessive upon consummation of the consolidation upon the terms proposed.

That the authority herein granted for the issuance of securities is upon the following conditions:

(a) Prior to exercise of such authority applicant's articles of incorporation shall be amended (and evidence of such amendment furnished us) so as to provide: (1) That holders of its preferred stock, voting separately as a class, in the event of default in pay-

<sup>24</sup> *Coastwise Consolidated Freight Lines, Inc.* — Stock, 5 M. C. C. 749, 755; *Unification of Southwestern Lines*, 121 I. C. C. 401, 428.

ment of dividends upon such preferred stock for two years or more, and until all dividends in arrears on such stock are paid, shall be entitled at any stockholders' meeting held for that purpose to elect a majority of applicant's board of directors; and (2) that its common stock shall be without par value.

(b) The preferred stock shall not be issued for sale to the public, as proposed, until any agreement or agreements entered into, or proposed to be entered into, by applicant for the sale or underwriting of such stock shall first be submitted to and approved by us.

#### GENERAL

Protestant, Super Service Motor Freight Company, operates as a motor-vehicle common carrier between points in middle and eastern Tennessee and Philadelphia in competition with Southeastern. While it does not oppose the applications generally, it objects to inclusion of Southeastern in the consolidation. It contends that Southeastern has no valid operating rights susceptible of such consolidation. A certificate of public convenience and necessity was issued to Southeastern, in No. MC-60451 (Sub-No. 3), November 4, 1941, authorizing operations between Johnson City, Tenn., and North Wilkesboro, N. C., and between West Jefferson and Winston Salem, N. C.; and in No. MC-60451, on November 29, 1938, issuance of a certificate to Southeastern was authorized, covering operations between Knoxville, Tenn., and New York and Scranton. Protestant alleges that the order of November 29, 1938, in No. MC-60451, was incorrectly entered. Such order is not subject to collateral attack in this proceeding, and so long as it remains in force must be accepted as correctly defining the operating authority granted. Southeastern's operations between Nashville and Knoxville are conducted under application No. MC-60451 (Sub No. 2) pending under the "grandfather" clause of section 206 (a), protestant contending that rights thereunder are not valid because of an interruption in service by a predecessor of Southeastern. We have consistently found that all issues in connection with the validity of claimed rights under pending "grandfather" applications must be reserved for determination in proceedings on such applications, and that principle is applicable to the applications here under consideration. This record shows that Southeastern is conducting the operations under that pending application.

It is also argued that, in view of the nature of its operating rights, the consideration for Southeastern's stock is excessive. Southeastern's net worth, exclusive of intangibles, is

approximately equal to the amount of stock which applicant would issue. A finding that such consideration is unreasonable is not warranted.

In arguing for denial of these applications, protestants have frequently compared the instant transactions with those disapproved in the Transport Co. case. Apart from the fact that the carriers here involved were, with 21 others, involved in that case, there is little similarity between such proposed transactions. In the previous case, substantially all of the consideration for the properties was to be paid in cash, to be obtained from the public; here the stockholders of the carriers are to receive no cash. In the Transport Co. case, large promotional and organizational fees were to be paid; here no fees are to be paid to promoters or organizers. It is true that those participating in the organization have been issued certain common stock for which payment was made at par; but even if it be assumed, as contended, that such stock will have a greater value than its present par, the only effect would be to reduce the value of the remaining common stock issuable under the respective contracts. This is equally true of the 9,000 shares of common stock issued to The Transport Company. The public interest is not concerned with the number of shares into which the parties divide their equity in applicant so long as its capitalization is not excessive. In the prior case, numerous employment agreements at substantial salaries were entered into in contemplation of the proposed unification; here no such employment agree-  
 55 ments have been made.<sup>25</sup> No question is presented here as to the reasonableness of property appraisals, or capitalization of earnings or intangibles. The fewer number of carriers involved in the instant proposal makes the question of possible restraint of competition less of a factor. The carriers involved in the prior case, but not in the present one, alone would furnish substantial competition to applicant throughout much of the territory involved.

The proposed unification is predominately an end-to-end consolidation of complementary operations. To the extent there is overlapping, the consolidation would result in elimination of duplications, with economies and the release and better use of equipment and terminal space. The unified operation would provide a more complete service in a large area along the eastern

<sup>25</sup> All employment agreements made by the companies here involved in contemplation of the previously-proposed unification have been cancelled with the exception of agreements between Arrow and four of its principal officers and stockholders. Arrow has agreed, if the instant transaction is consummated, to pay one of such persons \$12,000 (which sum was deducted from Arrow's net worth in determining the consideration) for cancellation of the agreement with him. The remaining agreements are with persons who are not directly involved in the instant transaction and who would not secure any of applicant's stock. They are unwilling that their agreements be cancelled, and, in view of the absence of any proprietary interest by them in the enterprise, applicant desires that continued service by them be assured through such employment agreements.

seaboard. It would be of sufficient size to make possible public financing, if subsequently required, and to command reasonable purchasing power in the acquisition of equipment, insurance, and credit. The principal officers of the respective companies would remain with the organization, and local management in the various divisions of the system would be left largely in their hands. Their continued participation and efforts to advance applicant's welfare are assured by their proprietary interest. The fact that these men, practically all of whom have had considerable experience and success in the motor-carrier industry, are willing to transfer control of properties, from which they are deriving good earnings, without receiving immediate monetary consideration, itself speaks well for the chances of success of the enterprise. Many of them have had experience in unifying motor-carrier operations on a smaller scale and are conversant with the economies and advantages to be derived therefrom.

The benefits which would accrue from a unification of this sort are particularly important at this time because of the increasing demand for transportation facilities, on the one hand, and the shortage of equipment, on the other. In the past, the carriers involved have been able to expand their facilities to take care of the growing volume of business through use of earnings. Increasing

56 this. Sale of stock to the public by these carriers individually for raising additional capital is not feasible, and extensive use of credit for expansion of facilities might prejudice their financial position.

Certain of the carriers involved have applications pending<sup>24</sup> under section 207 for extension of their operations. There are no operating rights under such applications which we may authorize to be included in the consolidation. Intermountain Transp. Co.—Purchase—Meisinger Stages, 5 M. C. C. 493, 494.

We find:

That acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation; Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of their capital stock, and consolidation into Associated Transport, Inc., of the operating rights and properties of the carriers named, for ownership, management, and operation, upon the modified terms and con-

<sup>24</sup> In the event applicant elects to exercise the authority herein granted, by acquiring control of the carriers involved as proposed, it may request substitution of itself as applicant for the authority sought in the pending section 207 applications.



ditions above set forth, which terms and conditions as so modified are found to be just and reasonable, is a transaction within the scope of section 5 (2) (a), and will be consistent with the public interest.

That, upon consummation of the consolidation herein authorized, and pending determination of the "grandfather" applications of the carriers consolidated into it, applicant shall be entitled to continue the operations lawfully conducted by such carriers under the "grandfather" clauses of sections 206 (a) and 209 (a) pursuant to such applications, and applicant will be entitled to a certificate covering common-carrier operating rights which have been granted such carriers and covering such common-carrier rights as may be confirmed as result of the pending "grandfather" applications of such carriers, all of which rights are herein authorized to be unified in applicant, with duplications eliminated. Final determination with respect to the question as to whether the holding by applicant of such certificates and also of the permit claimed in MC-59866 (Sub-No. 1), authorizing the transportation of precious metals and supplies and equipment used in connection therewith, as previously stated, will be made in that proceeding.

That issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 931,891 shares of common stock, for the purposes and upon the modified terms and conditions above set forth, (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

An appropriate order will be entered.

MILLER, Commissioner, concurring:

The preferred stock in this case has been made a par value issue and also fully cumulative. I regard these provisions as of questionable wisdom for a new corporation.

Admittedly, this company is short of working capital and proposes to sell 15,000 shares of par value preferred stock to increase working capital, purchase equipment, and pay outstanding obligations but apparently no commitment with respect to such sale has been made and no underlying agreement entered into. Owing to the uncertainties created by the war, the market for new securities of any kind is, according to common report, far from favorable. It may logically be inquired, therefore, what the situation will be in the event that it should be found impossible to sell all

or any considerable part of the 15,000 shares of preferred stock at par.

A provision making dividends upon a preferred stock issue fully cumulative tends all too frequently to result in the use of needed surplus for the payment of wholly or partially unearned dividends in order to avoid the destruction of common stock values resulting from the accumulation of unpaid dividends on the preferred. In the event of any appreciable accumulations, moreover, the loss in value of the common is likely to be so large as to render it unavailable for financing. This in turn may have a tendency to force the corporation into borrowing, particularly where, as is true in this case, the fully cumulative preferred stock is also a par value issue. Any appreciable dividend accumulations on a preferred stock will not only cause a great loss in common stock values but will ordinarily result in reducing the market price of the preferred stock to a point below par.

In my view, therefore, the preferred stock should be cumulative only to the extent earned and not paid in each year up to 6 percent. In the event of inability to earn the preferred dividends in whole or in part in any year, there would then be less compulsion upon the management to pay the full dividends in such year. Moreover, because there would be no accumulations on this type of security, the nonpayment of such preferred dividends in whole or in part would have a less serious effect on common stock values than would such a nonpayment where the dividend is cumulative.

If necessary to induce the consent of the preferred stockholders to such a cumulative arrangement, they might be offered either a participation in profits contingent on past unearned and unpaid dividends or a fixed participation in profits in addition thereto. Thus the preferred would be entitled, but only to the extent that 6 percent dividends had not been earned and paid in any prior year or years, to 15 percent of all the earnings over and above the specified 6 percent dividend. Or the preferred stockholder might be entitled in each year to 20 percent of all earnings over and above his initial 6 percent dividends, such 20 percent to be applicable, first, to the payment of a fixed participation of 50 cents or \$1 per share or as much thereof as was earned before common dividends, and, second, to the payment of any dividends up to 6 percent not earned and paid in any prior year. Any balance of the 20 percent participation remaining after these payments would be applicable to the common stock.

59. ALLDREDGE, Commissioner, concurring:

Recognizing that some features of the proposed motor-carrier consolidation might be improved, the plan has one virtue

which, to my mind, is sufficient to counterbalance all of its apparent imperfections. That virtue lies in the fact that regional or territorial boundaries have been disregarded and a transportation system proposed which is designed not only to serve local and regional needs but to function as a unit along national lines. For this reason, which seems quite important to me, I concur in the report.

**ATCHINSON**, Acting Chairman, dissents.

**SPLAWN**, Commissioner, dissenting:

The report finds that the proposed consolidation "would present many opportunities for greater economy and efficiency of operation." The alleged opportunities for economy are vague and speculative, and the same general statement could probably be made with respect to any proposed consolidation. In *Transport Co.—Control—Arrow Carrier Corp.*, 35 M. C. C. 61, 78, we said with respect to similar claims made in that proceeding:

"In the absence of evidence that similar consolidations or expansions of operations on such a large scale have produced results anticipated by applicant, the testimony with respect to proposed economies and improvements in service is not convincing."

The report makes the ultimate finding that "the proposed unification is predominantly an end-to-end consolidation of complementary operations." This statement is not supported by any facts showing the actual operations of the particular companies and seems contrary to the finding of duplication of mileage to the extent of 13,546 miles. One of the companies conducts a special contract carrier service with armored vehicles. It could hardly be contended that such a service is complementary to the services rendered by the other parties to the consolidation.

These carriers have grown to their present size under the dominating leadership of the proprietary owners. The companies included herein have the single common characteristic that the 60 proprietary owners are now willing to exchange that individual ownership for stock in the consolidated company. It is the intention of some to retire from active participation in the industry. The substitution of paid management for personalized ownership in the operation and control of these motor carriers will probably not lead to improvement in service or increase in economy and efficiency.

Fundamentally this is a plan which deals with the financial structure of the companies in such a way as to make it convenient ultimately for the present proprietors to dispose of their interests to the public and to divorce ownership from management. I fail to find any evidence as to how the actual operations of these sev-

eral carriers would fit into and merge, one with the other, so as to support the conclusion that the consolidated group would operate more efficiently and economically than the separate units.

**PATTERSON, Commissioner, dissenting:**

At least two aspects of this case, as reflected in the majority report, cause me to withhold my approval.

First, inclusion of the McCarthy contract operation amounts to grant of dual authority to Associated Transport, and on a basis not provided by statute or conforming to Commission precedents. Grant of such authority is authorized under Section 210 only where "for good cause shown" it is found to be consistent with the public interest. No good cause is shown, and the only interest here concerned appears to be the possible convenience and profit of participating carriers. No public interest is disclosed, and in the absence of such proof we should adhere to strict construction of this statute and conform to principles previously announced.

While the majority does not specifically approve such dual operations, it states that continuance of McCarthy's contract carrier operations in the transportation of precious metals and supplies and equipment used in connection therewith appears unobjectionable and permits continuance of same pending disposition  
61 of McCarthy's "grandfather" application, which application has been pending for many years. Manifestly this is equivalent to approval.

Second, the main purpose of Arrow inclusion appears to be the opportunity afforded a great banking institution to enter the vast motor carrier business which serves the nation. I cannot approve indirect participation by Kuhn, Loeb & Company as part owner of Associated Transport. The influence of such a financial power over the affairs of corporations, of which they own a part, is far beyond the proportion of stock held. Evils which have attended such participation in railroad transportation are well known. Section 5 of the Act was designed largely to avoid recurrence of such evils. The National Transportation Policy makes it a Commission responsibility to avoid dangers that may injure the transportation system which serves national commerce and defense. I regard part ownership of Associated Transport by Kuhn, Loeb & Company as inimical to public interest and national welfare.

Chairman **EASTMAN** did not participate in the disposition of this proceeding.

MCLEAN TRUCKING CO., INC., ET AL.

## Appendix A

ASSOCIATED TRANSPORT, INC. 2 CONTROL AIRWAY CARRIER CORPORATION ET AL.  
ASSOCIATED, TRANSPORT, INC. ISSUANCE OF SECURITIES.

Balance Sheet Statements of Companies Involved as of April 30, 1941 (a)

[illegible]



Investment Securities and Advances	8,503.29	98,830.64	115,393.32	65,553.11	0	6,711.26	510.00	60,500.00				335,893.02
Deferred Debts	85,795.40	76,966.74	177,672.14	73,834.13	28,967.19	118,830.56	8,444.01	38,674.39	678.35	2,612.64	4,361.13	1,052,622
Grand Total	1,086,859.05	942,550.82	1,600,903.45	2,125,702	68,827,154.03	1,046,250.10	105,470.46	478,426.74	69,276.42	29,708.47	431,063.19	204,406.00
LIABILITIES												
Current Liabilities												
Notes payable	5,000.00	85,127.56		39,728.42	13,500.00		24,000.00	95,914.46	27,500.00			286,000.44
Payables to Associated Officers and employees	0	164.56	187,307.77						900.00			197,372.63
Accounts payable	64,373.35	138,626.50	188.07	9,002.40	17,584.00			12,987.17				45,184.52
Notes payable	31,714.46	13,803.26	279,550.00	125,726.92	124,734.29	342,310.50	23,304.83	273,162.91	84	53,027.07	456.10	1,466,022.82
U. S. Government	12,820.02		604.00	44,250.95	23,434.50	35,332.04		6,771.66		1,047.21		295,444.20
Notes payable	25,862.63	18,966.04	144,315.36	197,432.37	50,013.40	77,817.21	10,135.51	6,460.54	2,531.15	51,529.01	36,400.66	626,510.86
Interest accrued	25,862.63	1,000.30	4,312.67	130.00	3,467.79			178.75		72.92	823.00	196.11
Other current liabilities	1,214.69		5,931.71	4,387.80	5,323.00	2,546.34				65.60		15,949.40
Total	149,375.28	372,296.48	481,671.21	500,003.49	257,124.03	577,003.13	58,404.88	331,635.73	2,710.78	134,873.07	37,690.76	598,762,871,541.16
Advance Payable				3,189.72	123,901.27			29,277.17			97,706.88	35,000.16
Equipment and Other Long-Term Obligations	36,797.71	144,733.47	300,233.32	172,820.44		390.00		108,682.47	10,500.00		105,000.00	117,033.28
Reserves			36,061.61	13,721.75	3,529.80							55,042.77
Capital Stock												
Preferred stock	158,000.00	12,300.00		33,325.00					24,800.00			246,120.00
Common stock, less premiums and discounts	98,825.00	100,000.00	11,415.00	212,081.00	101,000.00	35,000.00	50,000.00	25,000.00	2,000.00	100,000.00	100,000.00	855,750.00
Capital stock subscribed			479,968.04	7,200.00								429,486.04
Total	256,825.00	172,300.00	439,973.04	25,526.00	101,000.00	35,000.00	50,000.00	25,000.00	24,800.00	100,000.00	100,000.00	1,537,176.04
Unappropriated Surplus												
Unappropriated surplus	673,841.06	393,318.87	1,212,001.25	233,840.08	269,034.29	904,247.80	53,975.58	10,150,000.00	31,250.00	150,834.84	31,265.55	11,855,403,498,921.73
Earnings	673,841.06	393,318.87	1,212,001.25	233,840.08	269,034.29	904,247.80	53,975.58	10,150,000.00	31,250.00	150,834.84	31,265.55	11,855,403,498,921.73
Total	1,086,859.05	942,550.82	1,600,903.45	2,125,702.87	154,614.61	1,046,250.10	105,470.46	478,426.74	69,276.42	29,708.47	431,063.19	204,406.00
Grand Total												

NOTES: (a) Unless otherwise indicated. (b) As of May 17, 1941. (c) As of April 26, 1941. (Dr) Debit balance.

## Appendix B

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION, ET AL.—ASSOCIATED TRANSPORT, INC.—  
ISSUANCE OF SECURITIES

Comparative Statement of Revenue and Net Income of Companies Involved for the Years 1932 to 1940, Inclusive, and Four-  
Month Periods Ending April 30, 1940 and 1941

CARRIERS	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four months ending April 30.	
										1940	1941
Arrow Carrier Corporation:											
Revenue	\$986,018.93	\$724,839.82	\$783,330.07	\$790,291.91	\$800,110.70	\$670,645.35	\$1,000,115.56	\$1,510,477.04	\$1,408,001.13	\$475,107.87	\$526,043.63
Net income:											
Before income taxes	38,244.56	61,674.20	77,792.01	53,524.37	6,565.94	D 23,181.92	38,833.28	147,134.77	92,564.17	16,319.40	71,663.21
After income taxes	32,580.75	49,982.47	69,697.45	45,803.65	6,562.70	D 23,181.92	30,595.94	117,134.03	70,660.51	16,319.40	71,663.21
Barnwell Brothers, Incorporated:											
Revenue	346,466.69	485,385.65	563,064.51	735,796.76	1,076,070.32	1,100,453.94	1,385,252.70	1,870,080.51	2,066,670.71	641,454.07	832,836.20
Net income:											
Before income taxes	3,190.87	19,074.69	1,025.18	43,529.37	54,026.09	D 43,560.91	70,422.07	100,007.50	84,044.75	D 3,728.70	94,153.64
After income taxes	2,473.62	15,067.37	1,535.21	34,346.26	47,053.31	D 43,560.91	54,343.64	123,496.88	67,845.01	D 3,728.70	67,907.83
Consolidated Motor Lines, Incorporated:											
Revenue	\$,218,666.67	1,394,231.20	1,677,121.04	1,809,226.09	2,156,126.91	2,778,533.73	3,797,746.23	4,511,435.85	4,565,529.36	\$,1,578,776.52	\$,2,027,770.82
Net income:											
Before income taxes	4,127.80	D 80,432.17	D 0,894.11	60,237.06	D 30,721.59	D 121,290.34	87,190.15	86,108.48	188,083.00	\$,16,902.27	\$,272,082.30
After income taxes	4,202.91	D 80,432.17	D 0,894.11	52,047.33	D 30,721.59	D 121,290.34	70,598.91	71,971.42	120,331.54	\$,16,902.27	\$,253,186.08
Horton Motor Lines, Incorporated:											
Revenue	253,354.40	497,027.97	657,159.95	\$80,933.70	1,240,859.65	2,454,719.18	2,813,477.23	2,825,693.40	4,250,093.07	1,300,152.38	1,766,096.52
Net income:											
Before income taxes	12,519.48	30,465.99	D 1,254.54	74,596.03	164,814.79	\$,148,120.00	234,509.03	543,244.47	308,997.81	70,450.08	203,093.54
After income taxes	8,303.61	13,514.31	D 6,063.42	63,100.43	136,648.03	\$,107,293.36	295,390.65	392,540.95	197,084.45	70,450.08	208,241.03
McCarthy Freight System, Inc.:											
Revenue	420,612.76	474,661.71	587,092.23	725,328.43	806,000.75	954,345.65	1,197,622.26	1,682,394.81	1,901,634.04	\$,832,235.15	\$,692,772.53
Net income:											
Before income taxes	6,544.26	D 6,913.96	D 2,393.46	20,624.20	44,734.39	D 39,853.36	20,267.00	81,501.72	132,828.23	\$,15,316.77	\$,79,357.96
After income taxes	4,882.95	D 6,913.96	D 2,686.24	14,817.07	39,857.37	D 39,853.36	17,397.00	68,448.04	88,261.02	\$,15,116.71	\$,79,357.96

McLEAN TRUCKING CO., INC., ET AL.

M. Moran Transportation Lines, Incorporated	Revenue	517,905.90	604,713.49	824,162.48	211,658.80	1,708,305.23	2,195,951.80	1,946,182.53	2,535,316.43	2,814,859.67	826,531.66	1,040,080.11
	Net income	26,411.50	26,765.04	2,919.11	17,220.69	1,083.23	10,485.27	24,933.17	85,582.85	54,322.95	110,255.00	110,579.99
	Before income taxes	26,411.50	26,765.04	2,919.11	17,220.69	1,083.23	10,485.27	24,933.17	85,582.85	54,322.95	110,255.00	110,579.99
	After income taxes	26,411.50	26,765.04	2,919.11	17,220.69	1,083.23	10,485.27	24,933.17	85,582.85	54,322.95	110,255.00	110,579.99
Southeastern Motor Lines, Incorporated	Revenue	25,557.42	26,765.04	2,513.61	32,012.33	1,083.23	10,485.27	24,933.17	85,582.85	54,322.95	110,255.00	110,579.99
	Net income	183,251.63	308,501.44	480,774.03	133,441.02	181,153.07	133,441.02	133,441.02	133,441.02	133,441.02	133,441.02	133,441.02
	Before income taxes	183,251.63	308,501.44	480,774.03	133,441.02	181,153.07	133,441.02	133,441.02	133,441.02	133,441.02	133,441.02	133,441.02
	After income taxes	183,251.63	308,501.44	480,774.03	133,441.02	181,153.07	133,441.02	133,441.02	133,441.02	133,441.02	133,441.02	133,441.02
Transportation, Incorporated	Revenue	335.97	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60
	Net income	335.97	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60
	Before income taxes	335.97	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60
	After income taxes	335.97	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60	13,317.60
Total carrier companies	Revenue	3,443,625.31	4,299,836.34	5,092,520.28	6,253,225.08	8,018,262.36	11,281,520.03	13,104,151.26	17,395,540.72	18,705,204.41	5,807,544.14	7,656,988.81
	Net income	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,090,713.57	855,835.28	1,030,000.46	817,057.71	103,000.46	103,000.46
	Before income taxes	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,090,713.57	855,835.28	1,030,000.46	817,057.71	103,000.46	103,000.46
	After income taxes	94,558.55	11,965.89	69,187.79	280,632.14	238,336.39	1,090,713.57	855,835.28	1,030,000.46	817,057.71	103,000.46	103,000.46
NON-CARRIERS	Revenue	77,811.26	34,625.72	62,432.53	242,218.47	190,757.78	1,090,713.57	855,835.28	1,030,000.46	817,057.71	103,000.46	103,000.46
	Net income	77,811.26	34,625.72	62,432.53	242,218.47	190,757.78	1,090,713.57	855,835.28	1,030,000.46	817,057.71	103,000.46	103,000.46
	Before income taxes	77,811.26	34,625.72	62,432.53	242,218.47	190,757.78	1,090,713.57	855,835.28	1,030,000.46	817,057.71	103,000.46	103,000.46
	After income taxes	77,811.26	34,625.72	62,432.53	242,218.47	190,757.78	1,090,713.57	855,835.28	1,030,000.46	817,057.71	103,000.46	103,000.46
Barnesell Warehouse & Brokerage Company	Revenue	129,554.74	45,576.72	36,588.97	4,431.67	1,160.80	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26
	Net income	129,554.74	45,576.72	36,588.97	4,431.67	1,160.80	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26
	Before income taxes	129,554.74	45,576.72	36,588.97	4,431.67	1,160.80	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26
	After income taxes	129,554.74	45,576.72	36,588.97	4,431.67	1,160.80	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26	9,928.26
Brown Equipment & Manufacturing Company	Revenue	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61
	Net income	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61
	Before income taxes	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61
	After income taxes	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61	12,379.61
Conger Realty Company	Revenue	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06
	Net income	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06
	Before income taxes	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06
	After income taxes	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06	35,694.06

See footnotes at end of table.

*Comparative Statement of Revenue and Net Income of Companies Involved for the Years 1932 to 1940, Inclusive, and Four-Month Periods Ending April 30, 1940 and 1941—Continued*

	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four months ending April 30	1941
Southern New England Terminals, Inc.											
Revenue									\$17,100.96	\$3,096.59	\$9,133.32
Net income									3,318.96	3,018.59	7,632.75
Before income taxes									2,826.00	3,018.59	7,632.75
After income taxes											
Other noncarrier companies											
Revenue											
Net income									1,037,406.95	362,373.90	330,073.81
Before income taxes											
After income taxes											
Total all companies									265,228.92	95,897.07	88,306.99
Revenue									188,510.11	70,494.74	151,910.99
Net income											
Before income taxes									19,742,761.36	6,229,918.04	7,987,064.65
After income taxes											
Total									1,240,520.78	4,121,063.90	198,903.53
Revenue									47,758,704.63	173,501.20	733,066.72
Net income											
Before income taxes											
After income taxes											

<sup>a</sup> Deflated

<sup>b</sup> Because of change in fiscal year, amounts shown are for 10-month period ended March 31, 1938.

<sup>c</sup> Data not available.

<sup>d</sup> Commenced operations, March 1, 1938.

<sup>e</sup> Five period ended May 17.

<sup>f</sup> Four period ended April 19.

<sup>g</sup> Period January 1 to April 29.

# Appendix C

ASSOCIATED TRANSPORT, INC. CONTROL ARROW CARRIER CORPORATION, ET AL. ASSOCIATED TRANSPORT, INC.  
ISSUANCE OF SECURITIES

Net Worth as of April 30, 1941,\* and Net Income for Fiscal Year Ended on that Date of Companies Involved and Consideration for Stock Proposed to be Acquired by Associated Transport, Inc.

	Net worth		Net Income		Consideration		
	Per books	Adjusted	Per books	Adjusted	Stock of Associated Transport, Inc.		Total
					Preferred	Common	
<b>CARRIERS</b>							
Arrow Carrier Corporation	\$910,699.69	\$917,887.92	\$126,004.32	\$148,376.89	\$667,700.00	\$55,889.00	\$723,589.00
Barnwell Brothers, Incorporated	323,618.87	401,436.29	165,727.44	127,318.70	366,000.00	419,039.00	785,039.00
Consolidated Minor Lines, Incorporated	678,532.29	742,286.99	306,625.86	263,812.85	367,200.00	114,636.00	481,836.00
Hornum & Son, Incorporated	1,344,799.68	1,405,342.00	334,837.80	425,436.96	1,178,000.00	178,689.00	1,356,689.00
Midway Freight System, Incorporated	6411,928.99	422,021.83	170,162.16	133,118.00	328,300.00	57,166.00	385,466.00
Al. Martin Transportation Lines, Incorporated	339,613.80	331,451.91	92,239.03	79,622.95	221,400.00	94,356.00	315,756.00
Southeastern Minor Lines, Incorporated	106,973.38	96,811.32	38,301.32	15,324.77	79,000.00	21,732.00	100,732.00
Transportation, Incorporated	8,840.37	Dr. 48,263.12	12,789.70	Dr. 22,051.17		5,335.00	5,335.00
Total, carrier companies	4,601,977.04	4,462,035.17	1,221,086.41	1,108,990.83	3,447,000.00	550,914.00	3,998,914.00
<b>NON-CARRIERS</b>							
Barnwell Warehouse & Brokerage Company	56,029.64	115,369.28	3,415.59	3,424.03	122,300.00	16,876.00	139,176.00
Crown Equipment & Terminal Company	226,844.84	242,145.40	104,623.42	104,662.71	200,000.00	46,094.00	246,094.00
Consolidated Realty Company	131,265.55	131,318.30	66,865.89	68,217.55	704,700.00	30,988.00	735,688.00
Southern New England Terminals, Inc.	31,855.40	29,434.98	7,440.16	8,613.30	21,400.00	3,771.00	25,171.00
Total, noncarrier companies	476,015.43	438,268.07	182,247.06	184,917.76	457,300.00	97,729.00	555,029.00
Total, all companies	5,077,992.47	4,900,243.24	1,403,415.50	1,383,908.62	3,904,300.00	648,643.00	4,552,943.00

\* Unless otherwise indicated.

<sup>b</sup> As of May 17, 1941.

<sup>c</sup> As of April 26, 1941.

<sup>d</sup> Period ended May 17, 1941.

\* Period ended April 26, 1941.

<sup>c</sup> Excludes investment in stock of Barnwell Brothers, Incorporated.

<sup>d</sup> Debit.

<sup>e</sup> Debit balance.



At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 16th day of March, A. D. 1942

No. MC-F-1612

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al.

No. MC-F-1613

Associated Transport, Inc.—Issuance of Securities

Investigation of the matters and things involved in these proceedings having been made, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That acquisition by Associated Transport, Inc., New York, N. Y., of control of Arrow Carrier Corporation, Paterson, N. J., Barnwell Brothers, Incorporated, Burlington, N. C., Consolidated Motor Lines Incorporated, Hartford, Conn., Horton Motor Lines, Incorporated, Charlotte, N. C., McCarthy Freight System, Inc., Taunton, Mass., M. Moran Transportation Lines, Inc., Buffalo, N. Y., Southeastern Motor Lines, Incorporated, Bristol, Va., and Transportation, Incorporated, Atlanta, Ga., through purchase of capital stock, and consolidation into Associated Transport, Inc., of the operating rights and properties of said carriers, for ownership, management, and operation, be, and it is hereby, approved and authorized, subject to the terms and conditions set forth in the findings in said report.

It is further ordered, That Associated Transport, Inc., be, and it is hereby, authorized to issue 54,049 shares of preferred stock and 931,891 shares of common stock, for the purposes, and upon the terms and conditions set forth in the findings in said report.

It is further ordered, That, if applicant desires to consummate the transaction herein authorized, it shall (1) notify this Commission, in writing, of the date upon which it is intended to effect (a) acquisition of control and (b) consummation of the consolidation, or any portion thereof, (2) confirm, in writing to the Commission, the dates on which acquisition of control and consolidation are effected, and (3) coincident with consummation of the consolidation or any part thereof, promptly take such steps as will insure compliance with sections 215, 217, and 218 of the

Interstate Commerce Act, and with rules, regulations, and requirements prescribed thereunder.

It is further ordered, That, if the authority herein granted is exercised, concurrently with the acquisition of control being effected, applicant shall be subject to the provisions of sections 204 (a) (1) and (2), 214, and 220 of the act to the same extent as are the carriers of which it acquires control.

It is further ordered, That, unless applicant evidences its election to exercise the consolidation authority herein granted by acquiring control of the carriers involved, within six months from the date hereof, this order shall be of no further force and effect.

It is further ordered, That, except as herein authorized, said stock shall not be sold, pledged, repledged, or otherwise disposed of by applicant, unless and until so ordered by this Commission.

66 It is further ordered, That applicant shall report concerning the matters herein involved on forms BMC-28 and BMC-30 in conformity with orders dated August 3, 1936, respecting applications filed under section 214 of the act.

It is further ordered, That recital in said report of balance-sheet and other financial data shall not be construed as approving accounting methods which have been followed or expenditures represented thereby.

It is further ordered, That, before recording the consolidation upon its books, applicant shall submit the related journal entries, in triplicate, to our Bureau of Motor Carriers for approval.

And it is further ordered; That nothing herein shall be construed to imply any guaranty or obligation as to said stock, or dividends thereon, on the part of the United States, or as a determination of the operating rights of any person or persons under any section of the act, except section 5 thereof, as expressly determined herein.

By the Commission.

[SEAL]

W. P. BARTEL,

*Secretary.*

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#### *Appendix D*

#### Carrier Corporation, Et Al.

Associated Transport, Inc.—Control and Consolidation—Arrow  
Operating Authority of Carriers Involved

#### Arrow

No. MC-71536.—Issuance of a certificate authorized under "grandfather" clause in 17 M. C. C. 389, 21 M. C. C. 159.

No. MC-71536 (Sub-No. 1).—Certificate issued March 3, 1941, covering operating rights acquired pursuant to 15 M. C. C. 203.

### Barnwell

No. MC-14181, embracing Nos. MC-14181 (Sub-No. 1) and MC-14181 (Sub-No. 3).—Certificate issued June 9, 1941.

No. MC-14181 (Sub-No. 4).—Certificate issued October 17, 1941.

### Consolidated

No. MC-18159, embracing Nos. MC-9605, MC-17247, MC-44450, and MC-84585.—Certificate issued May 26, 1941.<sup>b</sup>

### Horton

No. MC-73943, embracing No. MC-73493 (Sub-No. 1).—Issuance of certificate authorized under "grandfather" clause by order entered October 26, 1940, amended April 10, 1941. Order does not cover operating rights claimed in application between Baltimore, Md., and Pittsburgh, Pa., and between Cumberland, Md., and Jennerstown, Pa., which are to be made the subject of a separate proceeding.

No. MC-73943 (Sub-No. 2).—Certificate issued June 11, 1941.

No. MC-73943 (Sub-No. 3).—Certificate issued February 10, 1941.

No. MC-73943 (Sub-No. 4).—Certificate issued August 26, 1941.

No. MC-73943 (Sub-No. 6).—Certificate issued October 7, 1941.

### McCarthy

No. MC-16034.—Issuance of certificate authorized under "grandfather" clause by order entered October 24, 1939, as amended December 6, 1939, and May 13, 1941.

No. MC-59865 (Sub-No. 1).—Issuance of a certificate authorized under "grandfather" clause by order entered February 11, 1939, covering operating rights acquired pursuant to 5 M. C. C. 684.

No. MC-59865 (Sub-No. 3).—Certificate issued February 5, 1941.

68 No. MC-59866 (Sub-No. 1).—Pending application for permit under "grandfather" clause covering operating rights acquired pursuant to 5 M. C. C. 684.

<sup>a</sup> Application for extension of operations pending under section 207 in No. MC-14181 (Sub-No. 5).

<sup>b</sup> Applications for extension of operations pending under section 207 in Nos. MC-73943 (Sub-No. 5), MC-73943 (Sub-No. 7), MC-73943 (Sub-No. 10), MC-73943 (Sub-No. 11), and, under section 210a (a) in No. MC-73943 (Sub-No. 9TA).

## Moran \*

No. MC-16034.—Issuance of certificate authorized under "grandfather" clause in 23 M. C. C. 139.

No. MC-16034 (Sub-No. 3 TA).—Authority for temporary extension of operations, for not exceeding 180 days, granted February 14, 1942, under section 219a, (a).

## Southeastern \*

No. MC-60451.—Issuance of certificate authorized under "grandfather" clause by order entered November 29, 1938.

No. MC-60451 (Sub-No. 2), embracing No. MC-76037.—Pending application for certificate under "grandfather" clause.

No. MC-60451 (Sub-No. 3).—Certificate issued November 4, 1941, covering operating rights acquired pursuant to 25 M. C. C. 701.

## Transportation \*

No. MC-52692.—Pending application for certificate under "grandfather" clause covering operating rights acquired pursuant to 35 M. C. C. 156.

No. MC-52692 (Sub-No. 1).—Certificate issued November 18, 1940, covering operating rights acquired pursuant to 35 M. C. C. 156.

No. MC-52692 (Sub-No. 2).—Certificate issued July 30, 1940.

No. MC-52692 (Sub-No. 3).—Certificate issued December 23, 1941.

No. MC-52692 (Sub-No. 5).—Certificate issued July 3, 1941, pursuant to 27 M. C. C. 679.

No. MC-52692 (Sub-No. 6).—Certificate issued February 21, 1942.

No. MC-52692 (Sub-No. 7).—Certificate issued February 27, 1941.

No. MC-52692 (Sub-No. 9).—Certificate issued September 29, 1941.

<sup>1</sup> Application for extension of operations pending under section 207 in No. MC-16034 (Sub-No. 2).

<sup>2</sup> Application for extension of operations pending under section 207 in Nos. MC-60451 (Sub-No. 1) and MC-76037 (Sub-No. 1).

<sup>3</sup> Application for extension of operations pending under section 207 in No. MC-52692 (Sub-No. 8).

## EXHIBIT B

## ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 22nd day of April, A. D. 1942.

No. MC-F-1612

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et. al.

No. MC-F-1613

Associated Transport, Inc.—Issuance of Securities

Upon consideration of the record in the above-entitled proceedings and of petitions of the Antitrust Division of the Department of Justice, The Secretary of Agriculture, The National Grange, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society (including petition for leave to intervene), Berks-Lehigh Mountain Fruit Growers, Inc., Appalachian Apple Service, Inc., and the American Farm Bureau Federation (including petition for leave to intervene), for reopening rehearing, reargument, and reconsideration by the Commission of its decision, entered March 16, 1942, in said proceedings, and good cause therefor appearing:

It is ordered, That said petitions be, and they are hereby, denied. By the Commission.

[SEAL]

W. P. BARTEL,  
Secretary.

70 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Petition of intervention of the Secretary of Agriculture*

*To the honorable the Judges of Said Court:*

The Secretary of Agriculture of the United States moves for leave to intervene as a plaintiff in this action, in order to assert the grounds of complaint set forth in his proposed complaint, a



copy of which is attached, pursuant to the authority contained in  
 Section 201 of the Agricultural Adjustment Act of 1938, as  
 71 amended (52 Stat. 36; 7 U. S. C. 1940 ed. 1291), and Section  
 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940  
 ed. 45a).

ASHLEY SELLERS,

Ashley Sellers,

*Acting Solicitor,*

*United States Department of Agriculture,*

*Washington, D. C.*

HASKELL DONOHO,

Haskell Donoho,

*Of Counsel*

#### CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document  
 upon all parties of record in this proceeding by mailing a copy  
 thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 19th day of May 1942.

HASKELL DONOHO,

Haskell Donoho,

*Senior Attorney,*

*United States Department of Agriculture,*

*Washington, D. C.*

72 In the District Court of the United States for the  
 Southern District of New York

[Title omitted.]

#### *Complaint*

1. The Secretary of Agriculture of the United States, inter-  
 vening plaintiff, adopts by reference the complaint of the original  
 plaintiff, McLean Trucking Corporation, Inc., with the exception  
 of paragraphs I and VIII thereof, and by way of further com-  
 plaint states:

73 2. The consummation of the proposed merger would in  
 substantial measure result in the elimination of motor car-  
 rier competition in the East.

3. The consummation of the proposed merger would, as the  
 Secretary of Agriculture is informed and believes, result ul-  
 timately in the cartelization of motor and rail transportation in  
 the East.

4. The elimination of competition in eastern transportation would adversely affect the interest of the producers and consumers of agricultural commodities.

WHEREFORE, intervening petitioner prays:

(a) That a decree be entered annulling and setting aside the existing order of the Interstate Commerce Commission, which order is reproduced as Exhibit "A" in the complaint of the original plaintiff, McLean Trucking Company, Inc.;

(b) That by such decree the corporate defendants, their officers and agents, be permanently enjoined and restrained from merging or attempting to merge said corporations pursuant to the authority granted in the order referred to above;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Respectfully submitted.

ASHLEY SELLERS,

Ashley Sellers,

Acting Solicitor,

*United States Department of Agriculture,  
Washington, D. C.*

By direction of the Secretary,

HASKELL DONOHO,

Haskell Donoho,

*Of Counsel.*

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In District Court of the United States  
For the Southern District of New York

[Title omitted.]

*Answer of Interstate Commerce Commission*

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph I of the complaint, the Commission for the purposes of this suit admits the allegations thereof except that, as to the allegation that plaintiff "is authorized to carry

on and conduct said business," the Commission denies that plaintiff is so authorized by virtue of the issuance of a certificate of public convenience and necessity covering its operations but admits that there is a proceeding pending before the Commission on an application by plaintiff for such a certificate under the grandfather clause of section 206(a) of Part II of the Interstate Commerce Act and that pending its determination plaintiff is authorized to conduct its operations.

## II

Answering paragraph III of the complaint, the Commission admits the allegations thereof.

## III

Answering paragraph III of the complaint, the Commission, for the purposes of this suit, admits the allegations thereof.

## IV

Answering paragraphs IV to VIII, inclusive, of the complaint, the Commission admits and alleges that on March 16, 1942, it made and entered the report and order, referred to in paragraph V of the complaint in a proceeding then pending before it entitled Docket No. M. C.-F-1612, Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation et al., and Docket No. M. C.-F-1613, Associated Transport, Inc.—Issuance of Securities; admits and alleges that said proceeding was instituted by the filing with it, July 25, 1941, of the two applications of Associated Transport, Inc., referred to in paragraph IV of the complaint, by the first of which the applicant sought authority under section 5, Part I, of the Interstate Commerce Act (1) to acquire control, through purchase of capital stock, of the eight corporations named in said paragraph IV, and (2) to consolidate into itself the operating rights and properties of those corporations within one year from date of acquisition of control, and by the second of which the applicant sought authority under section 214, Part II, of the Act to issue preferred and common stock to enable it to acquire control of the said corporations and of the four associated noncarrier corporations referred to in the said paragraph IV, and for the further purposes of providing funds for working capital and other corporate purposes, and for conversion from time to time of the preferred stock proposed to be issued; admits and alleges that full hearings were had upon the said applications and that

thereafter it made and entered the above-mentioned report and order of March 16, 1942, whereby it authorized and approved the proposed consolidation and other transactions to the extent and subject to the conditions set forth in the said report and order, a true copy whereof is attached to the complaint, "marked exhibit A"; and admits and alleges that, following the entry of said order, the petitions for rehearing, reargument and reconsideration, referred to in paragraph V, of the complaint, were filed with it, and that the said petitions were denied by order entered April 22, 1942, a copy of which is attached to the complaint, "marked exhibit B."

The Commission further alleges that in said proceeding the parties thereto were, and that each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered in and by said order was submitted to the Commission for consideration, by the counsel of said parties; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiffs in this suit, whereupon the Commission determined  
77 said matters and entered and duly served upon the parties to said proceedings, its said report and order; that said report and order includes the Commission's findings of fact, decision, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order of March 16, 1942, are based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said report and order of March 16, 1942, was not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evi-

dence to support it: that in making said order the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

The Commission specifically denies that plaintiffs will suffer irreparable damage by reason of its report and order as alleged in paragraph VI of the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the  
78 allegations herein, or with the statements or conclusions of fact included in said report and order of March 16, 1942.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,

DANIEL W. KNOWLTON,

By Daniel W. Knowlton,

*Chief Counsel.*

79 [Duly sworn to by Claude R. Porter; jurat omitted in printing.]

80 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Amendment to Answer of Interstate Commerce Commission*

The Interstate Commerce Commission, one of the defendants in the above suit, having heretofore made and filed its answer to the bill of complaint, hereby amends the same by this amendment to its answer, in which it says:

I

That the bill of complaint herein seeks to have enjoined and set aside an order made and entered by it on March 16, 1942, in a consolidated proceeding known as Associated Transport, Inc.—Control and Consolidation, and Associated Transport, Inc.—Issuance of Securities; that, by that order is granted certain authority to the applicant in the proceeding, Associated Transport, Inc., for the acquisition of control and consolidation of eight motor carriers, all as shown in the bill of complaint herein and exhibits thereto attached; that subsequently, however, the said order of March 16,



of 1,380 shares outstanding of the preferred stock of Arrow Carrier Corp. The agreement with reference to acquiring Arrow stock had been entered into by the Associated Transport, Inc. and The Transport Company (a subsidiary of Kuhn, Loeb & Company, Investment Bankers). The Transport Company did not own the common stock which it undertook to sell to the Petitioner, but under agreement with Arrow's common stockholders it had in effect an option to purchase such stock. The aforesaid Arrow stock was to be acquired in consideration of 6,877 preferred shares and 55,899 common shares of Associated Transport, Inc. The aforesaid authority authorized the Petitioner to issue such shares of its capital stock for such purposes. (Provision for the issuance from time to time of 27,508 shares of common stock for the conversion of this preferred stock was included.)

85 3. In the Commission's order of March 16th, 1942 above described, it was stated in the footnote on sheet 5 thereof—

"We were apprised during the course of oral argument that the option has now expired and that there is some doubt whether The Transport Company will be in a position to deliver Arrow's stock to applicant, as agreed. In the event the parties are unable to include Arrow in the consolidation as herein authorized, the transaction may nevertheless be consummated in other respects pursuant to our order herein and without necessity for further or modified authority."

4. Under date of April 15th, 1942, in a reply to the petition of various interveners for reopening and rehearing the above entitled matter, petitioner stated with respect to Arrow that it had been notified by The Transport Company of The Transport Company's decision not to acquire Arrow Carrier Corp.

5. Under date of April 16, 1942, and in compliance with provisions of the aforesaid order of March 16th, 1942, petitioner advised the Commission that—

"the stock of Arrow Carrier Corporation will not be acquired on the closing date. The reason for the nonacquisition of Arrow stock, as aforesaid, is that Associated has been notified by The Transport Company and by Kuhn, Loeb Co. that they have not acquired and do not intend to acquire the stock of Arrow. Accordingly, they are and will be unable to perform the contract between Transport and Associated, dated July 22, 1941, and mutual releases from this contract have been exchanged and Mr. J. S. Arnold, The Transport Company representative on the Board of Directors of Associated, has resigned."

On April 30th, 1942, pursuant to the rules and regulations of the Commission, there was filed with your honorable body a ten-day report representing disposal of securities under your afore-

said order of March 16th, 1942, which report (Form BMC 28) read in part:

86 "The Interstate Commerce Commission is advised that because of the failure of The Transport Company and/or Kuhn, Loeb & Co. to comply with the terms and conditions of the contract between The Transport Company and Associated Transport, Inc. dated July 22, 1941, Associated Transports, Inc. was not able to and will not be able to acquire the stock of Arrow Carrier Corporation (authority for which acquisition was included in the Commission's order of March 16, 1942) in accordance with the aforesaid contract with The Transport Company; furthermore said contract has been entirely cancelled and terminated and mutual releases have been exchanged between The Transport Company, Kuhn, Loeb & Co., and Associated Transport, Inc. Associated Transport, Inc. further states that it will not revive or consent to the revival of said contract and intends to stand on the failure of The Transport Company and/or Kuhn, Loeb & Co. to comply with the terms of the aforesaid contract."

6. On or about May 5th, 1942 there was commenced in the United States District Court, Southern District of New York, a suit in the name of McLean Trucking Company, Inc., which suit sought among other things to set aside the order of the Commission in the above caption cases in part, at least, on grounds connected with that portion of the Commission's order authorizing the Arrow acquisition.

7. In the interest of simplifying the issues in said suit and to avoid encumbering the record and consuming the time of the aforesaid Federal Court with pleadings or arguments addressed to the now moot question of the Arrow acquisition, Associated Transport, Inc., respectfully petitions your Honorable Body that appropriate modifications be made conforming the authority conferred on Petitioner in the premises by your order of March 16th, 1942, in cases—Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al, Docket No. MC-F-1612 and Associated Transport, Inc.—Issuance of Securities. Docket No. MC-F-1613; with the fact that Petitioner can not and will not acquire the stock of Arrow Carrier Corporation as permitted by said order.

ASSOCIATED TRANSPORT, INC.,  
1775 Broadway, New York, N. Y.  
By B. M. SEYMOUR, President.  
CLAUDE A. COCHRAN,  
HUGH M. JOSELOFF,  
MORTIMER A. SULLIVAN,

*Attorneys.*

Dated at New York, N. Y., May 21st, 1942.

87 B. M. SEYMOUR being duly sworn, deposes and says that he is the President of Associated Transport, Inc., the Petitioner herein and that he has read the foregoing petition and that the matters therein contained are true. Deponent further says that he has affixed his signature to said petition with the knowledge of and pursuant to the authority duly conferred upon him by the Directors of Associated Transport, Inc.

Subscribed and sworn to before me this 22nd day of May 1942.

PETER W. SPIESS,  
Notary Public.

#### CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addresed, to each party.

Dated at New York, N. Y., this 22nd day of May 1942.

B. D. RYAN.

A true copy.

[SEAL]

W. P. BARTEL,  
W. P. Bartel,  
Secretary, Interstate  
Commerce Commission.

#### EXHIBIT B

#### ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1942

No. MC-F-1612

Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation; et al.

No. MC-F-1613

Associated Transport, Inc.—Issuance of Securities

It appearing, That by order entered herein March 16, 1942, applicant, Associated Transport, Inc., of New York, N. Y., was authorized, among other things, to acquire control of and consolidate with Arrow Carrier Corporation, of Paterson, N. J., and to issue 6,877 shares of its preferred stock and 55,880 shares of its

common stock for that purpose and 27,508 shares of common stock for conversion of preferred stock so issued;

It further appearing, That the contract theretofore entered into between applicant and The Transport Company, of New York, N. Y., for acquisition of capital stock of Arrow Carrier Corporation, containing terms and conditions upon which the said acquisition of control was authorized, has been cancelled by the parties thereto;

And it further appearing, That applicant is no longer desirous of exercising the authority granted with respect to acquisition of control and consolidation with Arrow Carrier Corporation, and by petition filed herein May 23, 1942, has requested that said order be modified accordingly:

It is ordered, That said petition be, and it is hereby, granted, and so much of said order of March 16, 1942, as authorizes applicant to acquire control of and consolidate with Arrow Carrier Corporation and to issue its capital stock for that purpose and for conversion of preferred stock so issued, be, and it is hereby, vacated and set aside.

And it is further ordered, That except as expressly modified herein said order of March 16, 1942, shall remain in full force and effect.

By the Commission.

W. P. BARTEL,  
*Secretary.*

[SEAL]

A true copy.

W. P. BARTEL,  
*Secretary.*

[SEAL]

89 In the District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Objections of Interstate Commerce Commission made pursuant  
to provisions of urgent deficiencies act*

Comes now the Interstate Commerce Commission, one of the defendants in the above suit, and, in respect to the answer of the United States to the bill of complaint herein, says:

That, while this suit, being one to enjoin an order of the Commission, was brought against the United States as provided by the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 210, 219; 28 U. S. C. Secs. 45, 45a, 46 and 47), it, the Commission, and other of the defendants named in the bill, are made party defendants as of right by the same Act (28 U. S. C. Sec. 45a); and that, while

the said answer of the United States confesses error in the order of the Commission and prays for entry of a decree enjoining and annulling the order, the Commission and the other said party defendants, having by their answers filed herein taken issue with the complaint and asked for its dismissal, have, and each of them has, the right to defend, and to continue to defend, the suit unaffected thereby, this by virtue of the express provision in said Act, that—

90 “the attorney general shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney General therein.” 28 U. S. C. sec. 45a; *Interstate Commerce Commission v. Oregon-Washington R. Co.*, 288 U. S. 14, 24–26.

The Commission, therefore, being desirous that its order be defended, hereby makes and sets up, under the above provision, its objection to the undefended disposal of, and, in effect, discontinuance of, the suit that would be effected by the answer of the United States, standing alone, and asserts its right and intention, to defend, and to continue to defend, the suit and the validity of its order.

INTERSTATE COMMERCE COMMISSION  
DANIEL W. KNOWLTON,

By Daniel W. Knowlton,

*Chief Counsel.*

91 [Duly sworn to by Claude R. Porter; jurat omitted in printing.]

92 In District Court of the United States for the Southern District of New York

[Title omitted.]

*Answer of the United States of America*

Comes now the United States of America, by its counsel, and for answer to the complaint herein says that the United States admits the allegations thereof and confesses error in the order of the Interstate Commerce Commission.



WHEREFORE, the United States of America prays the court that a decree be entered enjoining, annulling and setting aside the order of the Interstate Commerce Commission herein.

ARNE C. WIPRUD,  
Arne C. Wiprud,  
FRANK COLEMAN,  
Frank Coleman,  
WILLIAM R. KUEFFNER,  
William R. Kueffner,

*Special Assistants to the Attorney General.*

DAVID G. MACDONALD,  
David G. Macdonald,

*Special Attorney, Counsel for the United States.*

THURMAN ARNOLD,  
*Assistant Attorney General.*

MATHIAS F. CORREA,  
Mathias F. Correa,  
*United States Attorney.*

JULY 2, 1942.

93

#### CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed to each party.

Dated at Washington, D. C., this 2nd day of July 1942.

A. C. WIPRUD.

94

In District Court of the United States for the Southern  
District of New York

[Title omitted.]

#### *Motion for leave to intervene as plaintiff*

Now comes the American Farm Bureau Federation, by its attorneys, and moves for leave to intervene as a plaintiff in this action in order to assert the grounds for complaint set forth in its proposed complaint, a copy of which is attached hereto, and respectfully alleges and shows as follows:

1. That the American Farm Bureau Federation is an association of farmers in forty (40) states of the United States, organized under the laws of Illinois, many of which are located in the Atlantic seaboard and the southern territory and are served by the motor carriers, parties to the proposed merger herein, or by their competitors.

2. That the purposes and functions, among others, of the American Farm Bureau Federation are to promote the interests of its members in the maintenance of low-cost transportation of farm products and farm supplies and to that end to support the national policy of effective competition in the transportation industry.

3. That the creation of a single motor carrier by the merger of eight of the largest common carriers of property by motor vehicle in the affected area, as proposed and authorized by the order of the Interstate Commerce Commission herein, will prevent the maintenance of free competition in the motor carrier transportation field in such area, and the recapitalization of such motor carriers, and the issuance and sale of their securities to the public, including a substantial stockholding in the merged motor lines by Kuhn, Loeb & Company, a banking and investment firm with an established history of affiliation with railroad companies, will result in the cartelization of motor vehicle and railroad transportation in the eastern United States, contrary to the National transportation policy.

4. That the members of the American Farm Bureau Federation in the area involved will be directly and adversely affected by such elimination of motor carrier competition and cartelization of motor vehicle and railroad transportation.

Therefore, petitioner prays that this court make an order granting leave to petitioner to intervene herein as a plaintiff and with leave to file the attached complaint herein pursuant to the authority contained in Section 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940 ed. 45a).

PAUL E. MATHIAS,

Paul E. Mathias,

KIRKPATRICK, MATHIAS & MELOY

By PAUL E. MATHIAS,

Paul E. Mathias

*Attorneys for American Farm Bureau Federation.*

By ORRIN G. JUDD,

*Attorneys for American Farm Bureau Federation.*

#### NOTICE OF MOTION

KIRKPATRICK, MATHIAS & MELOY, 1240 Transportation Building, Chicago, Illinois, Wabash 7591.

DAVIES, AUERBACH, CORNELL & HARDY, One Wall Street, New York, New York.

TO: ATTORNEY GENERAL OF THE UNITED STATES, Washington, D. C.

To: SECRETARY OF AGRICULTURE OF THE UNITED STATES, Washington, D. C.

To: SECRETARY OF INTERSTATE COMMERCE COMMISSION, Washington, D. C.

To: THE TRANSPORT COMPANY, % Kuhn, Loeb & Company, New York, N. Y.

To: E. B. USSERY, Counsel for McLean Trucking Co., Inc., 919 Investment Bldg., Washington, D. C.

To: ARROW CARRIER CORPORATION, Park and Getty Avenue, Paterson, N. J.

To: KUHN, LOEB & COMPANY, New York, N. Y.

To: C. A. COCHRAN, MORTIMER A. SULLIVAN, HUGH M. JOSELOFF, 1775 Broadway, New York, N. Y., and NORDLINGER, RIEGELMAN, COOPER & BENETAR, 420 Lexington Ave., New York, N. Y., Attorneys for Defendants; ASSOCIATED TRANSPORT, INC.; BARNWELL BROTHERS, INCORPORATED; CONSOLIDATED MOTOR LINES, INCORPORATED; HORTON MOTOR LINES, INCORPORATED; MCCARTHY FREIGHT SYSTEM, INC.; M. MORAN TRANSPORTATION LINES, INC.; SOUTHEASTERN MOTOR LINES, INCORPORATED; TRANSPORTATION, INCORPORATED; BARNWELL WAREHOUSE & BROKERAGE COMPANY; BROWN EQUIPMENT & MANUFACTURING COMPANY; CONGER REALTY COMPANY; and SOUTHERN NEW ENGLAND TERMINALS, INC.

96 You and each of you are hereby notified that the undersigned will present the above and foregoing Motion to said Court on the day of the hearing in this cause.

KIRKPATRICK, MATHIAS & MELOY.

By PAUL E. MATHIAS,

Attorneys for American Farm Bureau Federation.

STATE OF ILLINOIS.

County of Cook, ss.

#### AFFIDAVIT OF SERVICE

Paul E. Mathias, being first duly sworn upon his oath, deposes and says that he is one of the attorneys for the American Farm Bureau Federation, upon whose behalf the foregoing Motion is made; that he has served a copy of the above and foregoing Notice and Motion upon all the parties affected thereby and of record in this action, by mailing a copy thereof, properly addressed, with postage prepaid, to each of said parties or their attorneys to whom said notice is addressed, this 10th day of August, 1942.

PAUL E. MATHIAS.  
Paul E. Mathias.

Subscribed and sworn to before me this 10th day of August, 1942.

[SEAL]

B. MEAGHER, *Notary Public.*

97

In the District Court of the United States  
for the Southern District of New York

[Title omitted.]

*Complaint*

1. The American Farm Bureau Federation, intervening plaintiff, is a corporation organized under the laws of the State of Illinois and is an association of farmers in forty states of the United States, many of which are located in the Atlantic seaboard and the southern territory and are served by the motor carriers, parties to the proposed merger herein, or by their competitors.

2. The American Farm Bureau Federation adopts by reference the Complaint of the original plaintiff, McLean Trucking Company, Inc., with the exception of paragraphs I and VIII thereof, and by way of further complaint states:

3. The intervening plaintiff adopts by reference the allegations of paragraphs 2, 3 and 4 of the proposed complaint of the Secretary of Agriculture of the United States.

4. The consummation of the proposed merger would result in the cartelization of motor vehicle common carrier and railroad transportation of property in the eastern United States.

98 5. The substantial elimination of competition between motor vehicle common carriers and the cartelization of such carriers and rail carriers would adversely affect the interests of the producers and consumers of agricultural commodities, including the members of the American Farm Bureau Federation located in the Atlantic seaboard area and the southern portion of the United States.

Wherefore, intervening plaintiff prays:

(a) That a decree be entered annulling and setting aside the existing order of the Interstate Commerce Commission, which order is reproduced as Exhibit "A" in the complaint of the original plaintiff, McLean Trucking Company, Inc.;

(b) That by such decree the corporate defendants, their officers and agents, be permanently enjoined and restrained from merging or attempting to merge said corporations pursuant to the authority granted in the order referred to above;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

PAUL E. MATHIAS,

Paul E. Mathias,

KIRKPATRICK, MATHIAS & MELOY.

By PAUL E. MATHIAS,

Paul E. Mathias,

*Attorneys for American Farm Bureau Federation.*

KIRKPATRICK, MATHIAS & MELOY.

*1240 Transportation Building,*

*Chicago, Illinois, Wabash 7591.*

DAVIES, AUERBACH, CORNELL & HARDY.

*One Wall Street, New York, New York.*

By ORRIN G. JUDD,

*Attorneys for American Farm Bureau Federation.*

89 In the District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Answer*

*To the honorable judges of the District Court of the United States  
for the Southern District of New York:*

Comes now the defendants above named except United States of America, Interstate Commerce Commission, Arrow Carrier Corporation, The Transport Company, and Kulm, Loeb & Company, and for their answer to the suit of the plaintiff allege and show:

### I

The allegations contained in paragraphs I and II of the complaint are admitted.

### II

The allegations contained in paragraph III of the complaint are admitted; this defendant, however, alleging that the extent of the operations of these answering defendants is correctly reflected in the record on file in the proceedings referred to in paragraph IV of plaintiff's complaint.

### III

The allegations contained in paragraph IV and V of plaintiff's complaint are admitted.



## IV

The allegation contained in paragraph VI of the complaint stating "the operations and business of plaintiff is competitive with the operations and business of certain of the aforesaid common carriers by motor vehicle to be merged into defendant Associated Transport, Inc." is admitted; all other allegations of the said paragraph, including the sub-sections thereof are specifically denied.

## V

The allegations contained in paragraphs VII and VIII, and any and all of the sub-sections thereof, are denied.

Wherefore, these defendants pray the court:

First, that the prayer of plaintiff be denied.

Second, that these defendants have such other and further relief in the premises as to this court shall seem proper.

C. A. COCHRAN,

MORTIMER A. SULLIVAN,

HUGH M. JOSELOFF,

*Attorneys for these answering defendants,*

*Mail address: 1775 Broadway, New York, New York.*

NORDLINGER, RIEGELMAN,

COOPER & BENETAR,

By DAVID L. BENETAR,

*Attorneys for these answering defendants,*

*Office & P. O. Address: 420 Lexington Avenue,*

*New York, New York.*

101 [Duly sworn to by B. M. Seymour; jurat omitted in printing.]

102 District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Answer of Arrow Carrier Corporation*

Arrow Carrier Corporation, one of the defendants in the above entitled suit, by its attorney and solicitor Charles E. Cotterill, for answer to the complaint respectfully shows unto the court as follows:

## I

For lack of sufficient information this defendant can neither admit nor deny the allegations of Paragraph I of the complaint.

## II

The allegations of Paragraph II of the complaint are admitted.

## III

For lack of sufficient information this defendant can neither admit nor deny the allegations of Paragraph III of the complaint, except sub-section (b) thereof and the allegations of that sub-section are admitted.

## IV

The allegations of Paragraph IV of the complaint are admitted.

## V

The allegations of Paragraph V of the complaint are admitted.

## VI

The allegations of Paragraph VI of the complaint are denied.

## VII

The allegations of Paragraph VII of the complaint are denied.

## VIII

The allegations of Paragraph VIII of the complaint are denied.

## SEPARATE AND SPECIAL DEFENSES

For separate and special defenses this defendant further says:

Neither it nor its stockholders at any time entered into any agreement with Associated Transport, Inc. for the sale to or exchange of its stock with Associated Transport, Inc. In 1940 the then stockholders of this defendant entered into an agreement with The Transport Company, a Delaware corporation, concerning the sale of such Arrow Carrier Corporation stock to The Transport Company. This defendant is informed and believes and therefore avers that during 1941 The Transport Company in its own name and behalf, entered into a certain agreement with Associated Transport, Inc. by which, with approval of the Commission,

103-A The Transport Company would have the privilege of exchanging Arrow Carrier Corporation stock for stock of Associated Transport, Inc. In the decision and order of the Interstate Commerce Commission which is the subject matter of this suit it was determined by the Commission that acquisition by Associated Transport, Inc. of complete ownership and control of Arrow Carrier Corporation, through exchange of stock in that way would be lawful; and the benefits of that finding and conclusion of the Commission remain. However, subsequently to such

decision and order of the Commission. Arrow Carrier Corporation and its stockholders were advised by The Transport Company that its contractual privilege of purchasing the stock of Arrow Carrier Corporation as had been agreed upon in 1940 would not be exercised; and this defendant is advised that The Transport Company so notified Associated Transport, Inc. This defendant is further advised and therefore alleges that after such decision of the Commission but prior to its denials of rehearing the Commission was notified that the agreement between Associated Transport, Inc. and The Transport Company concerning Arrow Carrier Corporation stock would not be consummated. This defendant is further informed and believes and therefore avers that all the stock of The Transport Company is owned either by the partnership as such or the individual members of the partnership of Kuhn-Loeb & Company of New York City but that such partnership has no interest, financial, contractual, or otherwise, in any corporation other than Arrow Carrier Corporation, with respect to which the involved order of the Commission would apply. Therefore this defendant says that while the Commission has determined acquisition of control of Arrow Carrier Corporation by 104 Associated Transport, Inc. would be consistent with the public interest as required by law the particular plan of acquisition presented to the Commission for approval has not been and will not be executed. As a consequence all questions raised or sought to be raised in the complaint concerning the relationship of Kuhn-Loeb & Company to the transaction before the Commission are moot.

WHEREFORE having fully answered the defendant Arrow Carrier Corporation respectfully prays that the complaint shall be dismissed without costs to this defendant and that it may have such other relief as the facts shown or to be shown shall require.

CHARLES E. COTTERILL,

By Charles E. Cotterill,

*Attorney for defendant, Arrow Carrier Corporation.*

*Address: 70 East 45th Street, New York, N. Y.*

Filed: New York, N. Y. May 27, 1942.

105 In the District Court of the United States for  
the Southern District of New York

[Title omitted.]

*Answer*

Defendants, Kuhn, Loeb & Co. and The Transport Company, by their attorneys, Cravath, de Gersdorff, Swaine & Wood, for their answer to the suit of the plaintiff:

## FOR A FIRST DEFENSE

1. State that said defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraph VI of the complaint except that they admit that "the operations and business of plaintiff is competitive with the operations and business of certain of the aforesaid common carriers by motor vehicle to be merged into defendant Associated Transport, Inc.";

2. Deny each and every averment of paragraph VII of the complaint;

3. State that said defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraph VIII of the complaint.

## FOR A SECOND DEFENSE, ALLEGE:

4. The complaint, and each of the causes of action attempted to be stated therein, fails to state a claim against said defendants upon which relief can be granted.

106

## FOR A THIRD DEFENSE, ALLEGE:

5. As alleged in subsection (j) of paragraph III of the complaint, defendant, The Transport Company, at the time of the filing of the application with the Interstate Commerce Commission referred to in the complaint, had an option to purchase all outstanding common stock of Arrow Carrier Corporation. As alleged in subdivision (k) of paragraph III of the complaint defendant, Kuhn, Loeb & Co., a partnership, owns all outstanding stock of defendant, The Transport Company. Prior to the entry of the report and final order of the Interstate Commerce Commission referred to in paragraph V of the complaint said option held by defendant, The Transport Company, in respect of common stock of Arrow Carrier Corporation expired. As indicated in said report and order of the Interstate Commerce Commission, the Interstate Commerce Commission was advised of the expiration of said option prior to the entry of said report and order.

6. Said option has not been renewed and subsequent to the entry of said report and order of the Interstate Commerce Commission the contract between The Transport Company and Associated Transport, Inc. providing for the sale by The Transport Company to Associated Transport, Inc. of stock of Arrow Carrier Corporation in consideration of the issue to The Transport Company of stock of Associated Transport, Inc. as provided in said

contract was terminated by mutual consent of the parties thereto. There is no existing contract, arrangement, or understanding between said defendants or either of them and any of the other defendants herein named in regard to Arrow Carrier Corporation or the stock of Arrow Carrier Corporation.

Wherefore these defendants pray that the complaint be dismissed as against these defendants, together with the costs and disbursements of this action.

Dated: New York, N. Y., May 29, 1942.

CRAVATH, DE GERSDORFF, SWAINE & WOOD,

By LEONARD D. ADHINE,

*A Member of the Firm, 15 Broad Street, New York, N. Y.*

*Attorneys for these answering defendants.*

108 In United States District Court for the Southern District of New York

Civil Action Nos. 18-116

MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE  
COMMERCE COMMISSION, ET AL., DEFENDANTS

Before CHASE, C. J., WOOLSEY, and MANDELBAUM, D. JJ.

Action by the McLean Trucking Company, Inc., against the United States to enjoin and set aside an order of the Interstate Commerce Commission granting petitions for the authorization of the merger of certain interstate carriers by motor vehicle and the approval of the issuance of securities in connection therewith.

Davies, Auerbach, Cornell & Hardy, Attorneys for plaintiff; E. B. Ussery, Orrin G. Judd and Charles V. Guthrie, of counsel.

Thurman Arnold, Assistant Attorney General Arne C. Wiprud, William R. Kueffner, Charles S. Collier, Sp. Assistants to the Attorney General; John H. D. Wiggee, David G. MacDonald, Sp. Attorneys Mathias F. Correa, U. S. Attorney, for United States.

Daniel W. Kuowltan, Counsel for Interstate Commerce Commission.

Ralph F. Koebel, Attorney for Secretary of Agriculture.

Kirkpatrick, Mathias & Meloy, Attorneys for American Farm Bureau Federation.

109 Nordlinger, Riegelman, Cooper & Benetar, Attorneys for defendants, Mortimer A. Sullivan, of Counsel.



*Opinion*

CHASE, Circuit Judge:

This action was brought by the plaintiff, a common carrier by motor vehicle within part of the territory in which the defendant motor carriers, or some of them, operate, against the United States of America and the Interstate Commerce Commission, Associated Transport, Inc., Arrow Carrier Corporation, Barnwell Brothers Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines Incorporated, Transportation Incorporated, The Transport Company, Kuhn Loeb & Company, Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., under the Urgent Deficiencies Act (38 Stat. 129, 219; 28 U. S. C. A. Secs. 45 and 47a) to enjoin and set aside an order of the Interstate Commerce Commission which authorized the merger of the defendants who are carriers by motor vehicle and the issuance of securities in connection therewith. It was heard by a court of three judges pursuant to the statute.

The principal issues are (1) whether the findings of the Commission are supported by the evidence and (2) if so, whether the Commission's order was erroneous because it resolved the questions presented by the standard of what it determined was adequate transportation facilities in the public interest under the criteria prescribed in the Interstate Commerce Act without deciding that its order would not result in a consolidation that would violate the provisions of either the Sherman or the Clayton Act, as those acts have been construed generally.

The proceedings before the Commission were instituted by Associated Transport, Inc., a Delaware corporation which was organized for the purpose of bringing about the proposed merger and which was not then engaged in the transportation business. The carriers by motor vehicle it was proposed to merge operated as common carriers on regular routes and one or more of them served communities in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Ohio, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Louisiana.

There were two petitions which were consolidated for hearing. The first was by Associated Transport, Inc., for authority under Sec. 5 of the Interstate Commerce Act (1) to obtain control through the purchase of their capital stock of the following eight common carriers by motor vehicle: Arrow Carrier Corporation, Paterson,

N. J.; Barnwell Brothers Incorporated, Burlington, N. C.; Consolidated Motor Lines Incorporated, Hartford, Conn.; Horton Motor Lines Incorporated, Charlotte, N. C.; McCarthy Freight System, Inc., Taunton, Mass.; M. Moran Transportation Lines, Inc., Buffalo, N. Y.; Southeastern Motor Lines Incorporated, 111 Bristol, Va., and Transportation Incorporated, Atlanta, Ga., and (2) to consolidate into a unit for operation by itself the properties and rights to operate of the named carriers within one year from the date it should acquire the control of them. The second application was for authority to issue preferred and common stock to obtain funds needed to acquire the control of the named carriers and four associated noncarriers, viz, Barnwell Warehouse & Brokerage Company, Burlington, N. C.; Brown Equipment & Manufacturing Company, Charlotte, N. C.; Conger Realty Company, Charlotte, N. C., and Southern New England Terminals, Inc., Taunton, Mass.

The Antitrust Division of the Department of Justice, the Secretary of Agriculture, four fruit growers associations and Super Service Freight Company, a common carrier by motor vehicle, intervened and opposed the applications. There were other intervenors who, however, stood indifferent except the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America which at the close of the hearings supported the applications.

A previous application by another petitioner for authority to unify by means of a holding company set-up twenty-nine common carriers by motor vehicle which included the eight already named had been denied and these applications were the result of the desire of the petitioner and the eight operators involved to avoid the defects in the first application which had led to its denial largely on the ground that the then proposed unification was not economical in that it would permit two or more carriers under 112 common control to engage in duplication of service over most of the routes in the greater part of the territory affected.

In the instant proceedings there were extensive hearings before an examiner at which a large amount of evidence was introduced. After his proposed report was duly served on the parties the intervenors who opposed the applications filed objections which were argued before the Commission which after due consideration made the order now under attack.

The Commission made findings on what the record shows was adequate supporting evidence that the proposed consolidation would bring about economies and greater efficiency in operation; improvement in service; leave ample competitive motor vehicle carrier service in the territory affected; and be in the public interest within Sec. 5 of the Interstate Commerce Act.

After the suit was brought and the answer of the Commission was filed it was amended to allege, what is now undisputed, that because of the failure to carry through negotiations for the acquisition of the stock of the Arrow-Carrier Corporation the applicant petitioned the Commission for a modification of its order to exclude that carrier from the merger authorized and that was done by order entered June 8, 1942. All phases of this controversy which resulted from the inclusion of Arrow in the authorized consolidation are, therefore, eliminated and we will proceed as though Arrow had never been a party.

The United States answered by confessing error and praying for a decree setting aside the Commission's order. The  
 113 other defendants answered joining issue and praying that the complaint be dismissed. Their right so to do was not affected by the confession of error by the United States and the issues thus raised are still open. 28 U. S. C. A. sec. 45 (a); Interstate Commerce Commission v. Oregon-Washington R. R. Co. 288 U. S. 14.

As we have found that the evidence was sufficient to support the findings of the Commission our further review must be confined to determining whether the order is in conformity to the applicable law. *Virginian Ry. v. United States*, 272 U. S. 658; *Assigned Car Cases*, 274 U. S. 564; *Oregon-Washington R. & Nav. Co. v. United States*, 47 F. (2) 250. It follows, of course, that the remaining question is whether the findings provide adequate support for the order even though they do not negative the possibility that the merger will not be in accord with all the provisions of the antitrust statutes as they have been construed.

Considerable light will be thrown on this problem at once by noticing the plain fact that while the Antitrust Acts and the Interstate Commerce Act are designed to bring about the conduct of business for the common good the former are also penal and are aimed at the evils of monopolies as such which unreasonably restrain trade or business while the latter, though it does not disregard such evils, is primarily concerned with creation and maintenance of adequate transportation service to the public. Providing such adequate service comes, of course, within the realm of  
 114 trade or business and it is self-evident that the consolidation of the instrumentalities by which it is accomplished may create monopolies and consequent restraints which would be unreasonable, and therefore unlawful, if the antitrust laws are given paramount effect in every instance. We think it equally obvious that there may at times be at least an apparent conflict in the administration of these statutes. What will best serve the public interest by way of adequate transportation facilities may not leave the business so free from restraint due to

monopoly that it can justly be said that such restraint would be unreasonable were elimination of that the primary objective. It may be that reasonableness is a term sufficiently elastic, since it is dependent upon all the relevant circumstances in each instance, that the proper satisfaction of the need for adequate public transportation service would in and of itself prevent what incidental restraint of trade flowed from it from being unreasonable. We need not so decide now on broad principles, however, for we think Congress has made it plain in sec. 5 (11) of the Interstate Commerce Act [49 U. S. C. A. § 58] that it recognized the inherent possibility that orders by the Commission made within its powers and in discharge of its duty to further the creation and maintenance of transportation facilities in the public interest under the Act might not always be outside the field of restraints made unlawful by the antitrust statutes as construed in respect to restraint of commerce per se.

"Sec. 5 of Title 49 U. S. C. A. provides that:

115 "The carriers affected by any order made under the foregoing provisions of this section and any corporation organized to effect a consolidation approved and authorized in such order are received from the operation of the 'antitrust laws,' as designated in section 12 of Title 15, Commerce and Trade, and of all other restraints or prohibitions by law, State, or Federal, insofar as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section."

The import of this is that the Commission, when acting with due regard for the public interest, which certainly requires it when passing upon proposed consolidations of carriers to give adequate consideration to such features as the maintenance of desirable competition and avoidance of hampering restraints, may, and should, be guided by the scope and purpose of the Interstate Commerce Act and that if, as it has in this instance, it has properly interpreted that statute and applied it correctly to the facts proved and found its order is valid. The provision that those who act in reliance upon and in conformity to such an order are not subject to the provisions of the antitrust laws designated, or to "other restraints or prohibitions by law" makes that conclusion inescapable.

That the Commission had the authority under the Interstate Commerce Act to enter the order it made on adequate evidence and in furtherance of the public interest cannot be doubted.

Public interest is a proper standard in that it embraces in respect to public transportation service which is adequate, economical, efficient, necessary, and therefore appropriate to serve the public need. *New York Securities Corp. v. United States*, 287 U. S. 12. Such changes in the Transportation Act of 1920 as were brought about by the Emergency Railroad Transportation Act of 1933 kept this standard of action fully applicable. *Texas v. United States*, 292 U. S. 522. The Motor Carrier Act of 1935 and the Transportation Act of 1940 applied like principles to the regulation of common carriers by motor vehicle.

What is needed for adequate service is a matter for the Commission to decide and it is likewise free to decide what amount of competition is in furtherance of the public interest and what is not. It is not bound to preserve or foster competition to a degree that will not best serve the public interest from the standpoint of adequate public transportation service and whether competition as such is adequate or not must depend upon its effect in furtherance of the attainment of the ends Congress sought to accomplish under the Interstate Commerce Act administered by the Commission.

Nor does the fact that after this consolidation there will be no other one carrier by motor vehicle in competition with the applicant throughout the whole territory it serves prevent the making of the order. That is of course a factor to be considered, as it was, by the Commission in determining what is in the public interest just as are all the other pertinent factors and is to be given such weight in its final decision as the Commission, in its informed judgment and with due regard for all the evidence decides it should have. We cannot review the weight of the evidence or the wisdom of the order. *New England Divisions Case*, 261 U. S. 184, 204.

The order authorizing the issuance of securities required to finance the consolidation was also based on adequate findings amply supported by the evidence. It follows that that order is likewise to be given effect.

Injunction denied and complaint dismissed.

HARRIE B. CHASE,

*U. S. Circuit Judge.*

WOOLSEY,

SAMUEL MANDELBAUM,

*U. S. District Judges.*

Dated Dec. 8, 1942.



In United States District Court for the Southern District of  
New York

D Civil Action Nos. 18-116

MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,  
ET AL., DEFENDANTS

Before CHASE, C. J., and WOOLSEY, and MANDELBAUM, D. JJ.

*Findings of facts*

1. This case was heard on the pleadings and on the record of the proceedings before the Interstate Commerce Commission; its findings and decision thereon.

118 2. The plaintiff is a common carrier by motor vehicle in competition with one or more of the defendant common carriers by motor vehicle in part of the territory involved.

3. The facts found and reported by the Commission were based on substantial evidence and are adopted as the facts by this court.

CONCLUSIONS OF LAW

1. The order approving the proposed consolidation was made by the Commission in accordance with the facts and the applicable law and is valid.

2. The order approving the proposed issuance of securities in furtherance of the consolidation was made by the Commission in accordance with the facts and the applicable law and is valid.

3. The injunction should be denied and the complaint dismissed.

HARRIE B. CHASE,

*U. S. Circuit Judge.*

WOOLSEY,

SAMUEL MANDELBAUM,

*U. S. District Judges.*

Dated Dec. 8, 1942.

119

United States District Court for the Southern  
District of New York

Civil Action Nos. 18-116

McLEAN TRUCKING COMPANY, INC., PLAINTIFF

against

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE  
COMMISSION ET AL., DEFENDANTS

*Final decree*

This cause having come on for final hearing by the special court of three judges, constituted as required by the Act of October 22, 1913, (c. 32, 38 Stat. 219; U. S. C., Tit. 28, sec. 47) and the court, upon consideration of the evidence and the arguments of counsel orally and on brief, having concluded, found and determined, for the reasons set forth in the opinion heretofore filed by this court herein that the injunction prayed for should be denied and the complaint dismissed, it is

Ordered, adjudged, and decreed, that the injunction prayed for in the bill of complaint be, and the same is hereby denied, and the bill of complaint is hereby dismissed at the plaintiff's costs.

This 24th day of December 1942.

HARRIE B. CHASE,

*United States Circuit Judge.*

JOHN M. WOOLSEY,

*United States District Judge.*

SAMUEL MANDELBAUM,

*United States District Judge.*

120 In the District Court of the United States for the  
Southern District of New York

[Title omitted.]

*Petition for appeal*

McLean Trucking Company, Inc., plaintiff, The Secretary of Agriculture of the United States and American Farm Bureau Federation, intervening plaintiffs, in the above-entitled cause, considering themselves aggrieved by the final decree of this Court entered on the 28th day of December 1942, hereby pray an appeal from said final decree to the Supreme Court of the United States. Pursuant to paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States said plaintiffs present to this Court

herewith a statement showing the basis of jurisdiction of the Supreme Court to review the said final decree.

The particulars wherein said plaintiffs consider the decree erroneous are set forth in the assignments of error and prayer for reversal accompanying this petition and to which reference is hereby made.

Said plaintiffs pray that their appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said final  
121 decree was based, duly authenticated, be transmitted to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

E. B. USSERY,

E. B. USSERY,

*Counsel for McLean-Trucking Company, Inc.*

ROBERT H. SHIELDS,

Robert H. Shields,

*Solicitor of the United States Department of Agriculture.*

*Counsel for the Secretary of Agriculture of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

By PAUL E. MATHIAS.

Kirkpatrick, Mathias & Meloy.

*Counsel for American Farm Bureau Federation.*

122 In the District Court of the United States for the Southern District of New York

[Title omitted.]

*Order allowing appeal*

In the above-entitled cause, McLean Trucking Company, Inc., plaintiff, The Secretary of Agriculture of the United States and American Farm Bureau Federation, intervening plaintiffs, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on the 28th day of December, 1942, and having also made and filed their assignments of error and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided,

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

WOOLSEY

*United States District Judge.*

This 23rd day of February 1943.

123 In the District Court of the United States for the Southern  
District of New York

[Title omitted.]

*Assignments of error and prayer for reversal*

McLean Trucking Company, Inc., plaintiff, The Secretary of Agriculture of the United States, and American Farm Bureau Federation, intervening plaintiffs, in connection with their petition for an appeal to the Supreme Court of the United States, hereby assign error to the record and proceedings and to the entry of the final decree of the said District Court on December 28, 1942, in the above-entitled cause, and say that in the entry of the said final decree the said District Court committed material error to the prejudice of the said plaintiffs in the following particulars:

1. The Court erred in holding that the facts found and reported by the Commission were based on substantial evidence, and in adopting as its own findings of fact those made by the Commission.

2. The Court erred in holding that the order approving the proposed merger was made by the Commission in accordance with the facts and the applicable law and is valid.

3. The Court erred in holding that the order approving the proposed issuance of securities in furtherance of the merger  
124 was made by the Commission in accordance with the facts and applicable law and is valid.

4. The Court erred in holding that the injunction should be denied and the complaint dismissed.

5. The Court erred in entering its decree of December 28, 1942.

6. The Court erred in construing as it did the provisions of Section 5 of the Interstate Commerce Act, as amended.

7. The Court erred in failing to hold that the Commission can not enter an order approving a merger of motor carriers which involves the elimination of substantial competition except upon a finding that existing motor carrier services are inadequate.

8. The Court erred in holding that the order of the Commission was valid, notwithstanding the Commission's failure to make a finding that existing motor carrier services are inadequate.

9. The Court erred in holding that the standards and criteria to be applied by the Commission under the Transportation Act of 1940 in determining whether a merger of motor carriers should be approved are the same as the standards and criteria which were applicable to the merger of rail carriers under the Transportation Act of 1920.

10. The Court erred in holding that the Commission's order was valid, notwithstanding the fact that the order was based upon findings made pursuant to the standards and criteria prescribed by the Transportation Act of 1920 with respect to merger of rail carriers instead of the standards and criteria prescribed by the Transportation Act of 1940 with respect to merger of motor carriers.

11. The Court erred in holding that it would consider the case as if the inclusion of Arrow Carrier Corporation in the proposed merger had never been contemplated and as though Arrow  
125 had never been a party in holding that all phases of the controversy which resulted from the inclusion of Arrow are eliminated from the case.

12. The Court erred in that it did not consider and determine the important public questions under the proviso of Section 5 (2) (b) of the Interstate Commerce Act arising from the facts with respect to the relationship between Arrow Carrier Corporation, Kuhn, Loeb & Company, Transport Company, Inc., and Associated Transport, Inc.

13. The Court erred in holding that the order of the Commission was valid, notwithstanding the fact that the Commission did not apply the proviso of Section 5 (2) (b) and did not make findings with respect to the use of motor vehicle service to public advantage by a carrier by railroad and with respect to undue restraint of competition.

14. The Court erred in holding that the order of the Commission was valid, notwithstanding the fact that the Commission in finding whether the proposed transaction "will be consistent with the public interest" did not consider the effect of the proposed transaction in the light of the provisions and policies of the anti-trust laws, as well as the effect of the proposed transaction upon adequate transportation service to the public and the preservation of the inherent advantages of motor carrier transportation.

15. The Court erred in holding that the order of the Commission was valid, notwithstanding the fact that the Commission did not consider and give weight to the provisions and policies of the antitrust laws, although the terms of Section 5 (11) of the Interstate Commerce Act do not dispense with the necessity of  
126 due consideration by the Commission, in determining whether the proposed transaction "will be consistent with the public interest," of the provisions and policies embodied in the antitrust laws and other statutory provisions and policies established by the Congress.



Wherefore the said plaintiffs respectfully pray that the final decree of the District Court in this cause entered on December 28, 1942, may be reversed, and for such other and appropriate relief as to the Court may seem just and proper.

E. B. USSERY,

E. B. USSERY,

*Counsel for McLean Trucking Company, Inc.*

ROBERT H. SHIELDS,

*Solicitor of the United States Department of Agriculture,*

*Counsel for the Secretary of Agriculture of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

Kirkpatrick, Mathias & Meloy,

By Kirkpatrick, Mathias & Meloy.

*Counsel for American Farm Bureau Federation.*

127 In the District Court of the United States for  
the Southern District of New York

[Title omitted.]

*Notice of appeal*

To: The Attorney General for the State of New York.

You are hereby notified that the District Court of the United States for the Southern District of New York, on February 23rd, 1943, filed and entered an order allowing an appeal by McLean Trucking Company, Inc., plaintiff. The Secretary of Agriculture of the United States and American Farm Bureau Federation, intervening plaintiffs, to the Supreme Court of the United States from a decree filed and entered on the 28th day of December 1942 in the above-entitled cause, and that the citation signed by such court on February 23rd, 1943, in connection with the order allowing such appeal is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, plaintiffs jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, the statement required to be served on ap-  
128 pellee by said Rule 12, assignments of error and prayer for reversal, proof of service and praecipe.

This notice is given to you pursuant to the provisions of U. S. C. Title 28, Sec. 47 a, Act of March 3, 1911, c. 231, Sec. 210, 36 Stat.

1150, as amended by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

E. B. USSERY,

E. B. Ussery,

*Counsel for McLean Trucking Company, Inc.*

ROBERT H. SHIELDS,

Robert H. Shields,

*Solicitor of the United States Department of Agriculture,*

*Counsel for the Secretary of Agriculture of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

By PAUL E. MATHIAS,

Kirkpatrick, Mathias & Meloy.

*Counsel for American Farm Bureau Federation.*

This 23rd day of February 1943.

#### ADMISSION OF SERVICE

Received a copy of the foregoing notice this \_\_\_\_\_ day of February 1943.

*Attorney General for the State of New York:*

129 In the District Court of the United States for the Southern District of New York

[Title omitted.]

#### *Proof of service*

Service of the petition for appeal, order allowing appeal, assignments of error and prayer for reversal, statement as to jurisdiction with opinion attached, praecipe, and citation in the above-entitled cause, together with a statement directing attention to the provisions of paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States, is accepted and copies received this 23rd day of February 1943.

ARNE C. WIPRUD,

*Special Assistant to the Attorney General,*

*Counsel for United States of America.*

DANIEL W. KNOWLTON,

*Chief Counsel, Interstate Commerce Commission,*

*Counsel for Interstate Commerce Commission.*

130 Copy of aforesaid documents received.

NORDLINGER, REIGELMAN, COOPER & BENETAR,

Nordlinger, Reigelman, Cooper & Benetar

By A. H. Nordlinger

*Counsel for Associated Transport, Inc., Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, Transportation, Incorporated, Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc.*

ARROW CARRIER CORPORATION

Arrow Carrier Corporation

By E. N. PIRNOT, Agent.

THE TRANSPORT COMPANY

The Transport Company

KUHN-LOEB & COMPANY

By P. M. STEWART,

KUHN, LOEB & COMPANY

Kuhn, Loeb & Company

By R. F. BROWN.

131 In the District Court of the United States for the Southern District of New York

[Title omitted.]

*Præcipe*

*To the clerk of the District Court of the United States for the Southern District of New York:*

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz.,

1. Bill of complaint, verified May 1, 1942, filed May 6, 1942, including Exhibits attached thereto.

2. Petition of intervention and complaint of the Secretary of Agriculture of the United States served May 19, 1942.

3. Answer of Interstate Commerce Commission verified May 20, 1942.

4. Amendment to answer of Interstate Commerce Commission verified June 17, 1942, including Exhibits attached thereto.

5. Answer of the United States of America confessing error, dated July 2, 1942.

132 6. Objections of Interstate Commerce Commission made pursuant to provisions of Urgent Deficiencies Act, served July 6, 1942.

7. Motion for leave to intervent and complaint of American Farm Bureau Federation, served August 10, 1942.

8. Answer of Associated Transport, Inc., et al., verified May 26, 1942.

9. Testimony offered at the trial, October 8, 1942, including certified record made before the Interstate Commerce Commission.

10. Final decree filed December 28, 1942.

11. Opinion of the District Court, dated December 8, 1942, together with the Court's Findings of Fact and Conclusions of Law.

12. Petition for appeal.

13. Order allowing appeal.

14. Assignments of error and prayer for reversal.

15. Statement as to jurisdiction.

16. Statement required by paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States.

17. Citation.

18. Proof of Service.

19. Notice of Appeal to the Attorney General of the State of New York.

20. Praecipe.

E. B. USSERY,

E. B. Ussery,

*Counsel for McLean Trucking Company, Inc.*

ROBERT H. SHIELDS,

Robert H. Shields,

*Solicitor of the United States Department of Agriculture,*

*Counsel for the Secretary of Agriculture*

*of the United States.*

KIRKPATRICK, MATHIAS & MELOY,

By PAUL E. MATHIAS,

Kirkpatrick, Mathias & Meloy.

*Counsel for American Farm Bureau Federation.*

This 23rd day of February 1943.

133 In District Court of the United States for the Southern  
District of New York

[Citation in usual form omitted in printing.]

135 [Clerk's Certificate to foregoing transcript omitted in  
printing.]

137 In United States District Court, Southern District of New York

Civ. 18-116

MCLEAN TRUCKING COMPANY, INC., PLAINTIFF

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,  
ET AL., DEFENDANTS

*Statement of evidence*

Before Hon. HARRIE B. CHASE, C. J., Hon. JOHN M. WOOLSEY,  
D. J., Hon. SAMUEL MANDELBAUM, D. J.

NEW YORK, October 8, 1942, 2:30 p. m.

*Appearances*

Davies, Auerbach, Cornell & Hardy, Esqrs., Attorneys for Plaintiff; Orrin G. Judd, Esq., and E. B. Ussery, Esq., of Counsel. Thurman Arnold, Esq., Assistant Attorney General of the United States, for the Government; Thurman Arnold, Esq., and A. C. Wiprud, Esq., Special Assistant to the Attorney General, of Counsel.—Daniel W. Knowlton, Esq., Chief Counsel, Attorney for Interstate Commerce Commission. Ralph F. Koebel, Esq., 138 Attorney for Secretary of Agriculture. Kirkpatrick, Mathias & Meloy, Esqrs., Attorneys for American Farm Labor Bureau; Paul E. Mathias, Esq., of Counsel. Nordlinger, Riegelman, Cooper & Benetar, Esqrs., Attorneys for Defendants; Mortimer A. Sullivan, Esq., of Counsel.

139

*Colloquy*

Mr. JUDD. May it please the Court, this is a suit under the Urgent Deficiencies Act to set aside several orders of the Interstate Commerce Commission approving a merger of trucking companies, under Section 5 of the Interstate Commerce Act, which forms the largest trucking combine in the United States. I have prepared for the Court a set of the marked pleadings, the complaint, the answers of the various parties, and two motions to intervene.

The United States of America, which is the primary defendant in such a suit, confesses error and admits that the order of the Interstate Commerce Commission was erroneously entered and should be annulled. I think some of the parties before the Commission and possibly the Commission itself may take a different



attitude. But the United States agrees with the contentions of the plaintiff in this action. There are two motions, as set, to intervene, one by the American Farm Bureau Federation, and one by the Department of Agriculture, and I think it might be appropriate that those be heard first.

Judge CHASE. Probably.

Mr. JUDD. And if it is necessary, I should like to move this Court for the admission for this case of my Washington associate, and of the counsel for the American Farm Bureau Federation, a Chicago attorney.

Judge CHASE. We would be very glad to hear them. I suppose they are not attorneys of record, and if they are not attorneys of record they won't have to be admitted. We can hear them as a matter of courtesy.

Mr. JUDD. In a sense they are attorneys of record, but I am designated as the New York representative to receive pleadings from both of them, and I take it it is not necessary to make any motion for the admission of the representatives of the United States Government from Washington.

Judge CHASE. We will hear the motions to intervene, then. Is there any opposition to those motions? Does anyone oppose?

(No response.)

Mr. KOEBEL. I appear on behalf of the Secretary of Agriculture, your Honor.

Judge CHASE. You wish to intervene?

Mr. KOEBEL. Yes.

Judge CHASE. Now is there anyone opposing the motions to intervene?

(No response.)

We will grant those motions as a matter of course.

Mr. KNOWLTON. If the Court please, with respect to the answer of the United States, confessing error and asking for dismissal of the order, at the time the answer was filed, I filed a paper marked objections, pursuant to the Urgent Deficiencies Act, which were objections simply to the case being disposed of on that answer, because the statute gives the Commission and other parties intervening express right to continue the defense in the event the Attorney General should drop out.

Judge CHASE. For whom do you appear?

Mr. KNOWLTON. Interstate Commerce Commission, sir.

Judge CHASE. Now who is to be heard first?

Mr. JUDD. I am prepared to argue first on behalf of the plaintiff if it is agreeable to the Court and the other parties.

Judge CHASE. Well, go ahead. I do not know how much time this will take. We will take as much time as necessary, but we want to get through this afternoon.

Mr. JUDD. I will have to condense my argument considerably to do that. I think it would take pretty nearly an hour to outline the facts, which are fairly complicated, and the law. I think that Mr. Arnold has some argument.

Mr. ARNOLD. If it would not be unduly burdensome, Mr. Wiprud and I would like to have an hour and a half.

Judge CHASE. Well, we will give you whatever time is necessary, of course. Now, how many expect to be heard?

142 Mr. ARNOLD. Myself and Mr. Wiprud on behalf of the United States.

Mr. JUDD. Mr. Ussery may have some part in the argument.

Mr. KOEREL. Your Honors, the Secretary of Agriculture presents no argument. We will file a brief.

Mr. MATHIAS. On behalf of the American Farm Bureau Federation, we have no argument, but we would like to file a brief.

Judge CHASE. Suppose we did something like this: let the plaintiff have an hour and a half and let the rest of you have an hour and a half, and divide it up as you please, or perhaps we had better make it two hours. Each side can have two hours. You can divide the time up as you like. All right, let us begin.

### *Offers in evidence*

Mr. JUDD. I think the first step is the introduction of the record before the Interstate Commerce Commission. I have here a certified copy of papers beginning with the application and running through the orders, exclusive of the transcript, certified by the Secretary of the Interstate Commerce Commission. I have a list of all those papers which I would like to hand to the Court, listing both the papers that were filed in the Interstate Commerce Commission and the exhibits. (Marked "Plaintiff's Exhibit 1.")

143 Mr. JUDD. I have briefs which outline the significant parts, and I do not know whether the defendants are ready to exchange briefs at this time, but I think it might be helpful if I give those to your Honors so that you can follow the parts of the argument and the statutes.

Judge CHASE. All right.

Mr. KNOWLTON. I have not made up my mind whether to file a brief yet. If the Courts please, the division of time of two hours per side, the United States being a defendant which has confessed error and presumably is going to argue for the plaintiff, I assume his time will be in the two hours for the plaintiff?

Judge CHASE. I had not thought of that, but apparently it ought to be, ought it not? I think it ought to be so.

Mr. JUDD. Next is the transcript of testimony before the Interstate Commerce Commission, which will be Exhibit 2.

Judge WOOLSEY. What was the first?

Mr. JUDD. The first was the pleadings in the Interstate Commerce Commission, together with the brief and the proposed report, and the final report. (Marked "Plaintiff's Exhibit 2.")

Mr. JUDD. The next is the exhibits which were  
144 offered in the Interstate Commerce Commission. (Marked "Plaintiff's Exhibit 3.")

Mr. JUDD. That completes the records on which this Court should act, as far as I know. The pleadings are more or less formal in the action, and there is no denial of any material allegations of the pleadings.

Judge CHASE. Now may we take that as a completion of the record?

Mr. JUDD. I have one more thing that I have omitted. Subsequent to the act of the Interstate Commerce Commission embraced in that record, there was an order granting leave to this merged company to sell some of its stock to equipment and tire companies, of which we have a certified copy, and we would like to offer that in evidence as bearing on the issues. (Marked "Plaintiff's Exhibit 4.")

Judge CHASE. Now, does any party have anything to offer as a part of the record?

(No response.)

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*Plaintiff's Exhibit 1*

Before the Interstate Commerce Commission

APPLICATION OF ASSOCIATED TRANSPORT, INC. FOR THE ACQUISITION,  
BY EXCHANGE OF STOCK, OF CONTROL OF CERTAIN MOTOR CAR  
RIERS, AND FOR THE CONSOLIDATION THEREOF.

Filed July 25, 1941

Docket No. BMC-F-1612

146

APPLICATION FOR AUTHORITY UNDER SECTION 5, INTERSTATE  
COMMERCE ACT, TO ACQUIRE CONTROL OF A MOTOR CAR  
RIER OR MOTOR CARRIERS THROUGH OWNERSHIP OF STOCK  
OR OTHERWISE, AND TO CONSOLIDATE OR MERGE THE PROP-  
ERTIES OR FRANCHISES OR ANY PART THEREOF, OF A MOTOR  
CARRIER, OR TO PURCHASE, LEASE, OR CONTRACT TO OPER-  
ATE THE PROPERTIES, OR ANY PART THEREOF, OF A MOTOR  
CARRIER

## Docket No. MC-F —

*To the Interstate Commerce Commission, Washington, D. C.:*

## APPLICANT REPRESENTS

## I. That this is an application of

**Associated Transport, Inc.**

(State full and correct name of person seeking to acquire control)

**Corporation**

(State whether corporation, partnership, individual, trustee, receiver, or assignee)

**Neither**

(State whether a rail, express, motor, or water carrier)

doing business as **Associated Transport, Inc.**

**Business address 1775 Broadway, New York, New York,**

(Number and street)

(City)

(County)

**New York.**

(State)

that information respecting said person is set forth in Exhibit A, attached hereto and made a part hereof, that this is an application

(1) to acquire control of Horton Motor Lines, Inc., 1001 Clarkson St., Charlotte, N. C.; Barnwell Bros., Inc., Hawking St., Burlington, N. C.; Southeastern Motor Lines, Inc., Commonwealth Ave., Bristol, Va.; Transportation, Inc., 75 Ivy St., N. E., Atlanta, Ga.; McCarthy Freight System, Inc., Olney & Wales St., Taunton, Mass.; Consolidated Motor Lines, Inc., 1179 Main St., Hartford, Conn.; M. Moran Transportation Lines, Inc., 22 Roosevelt St., Buffalo, N. Y.; and Arrow Carrier Corporation, Park St. & Getty Ave., Paterson, N. J., through ownership of capital stock, and

(2) if the control of the aforesaid companies through ownership by applicant of their capital stock be approved and authorized, then and in that event present approval and authority to consolidate the aforesaid companies with the applicant so that applicant will be the sole operating company, owning all of the assets, including operating rights, and assuming all of the liabilities of each of the aforesaid companies, and said consolidation to be fully accomplished within one year from date of acquisition of stock control.

II. That information respecting said motor carriers of which control is proposed is set forth in Exhibits B, B-1, etc.

147 III. That the motor-vehicle equipment owned, leased, controlled or normally operated by applicant (if a motor carrier), and the motor carriers of which control is proposed to be

acquired during the six-month period immediately preceding the filing of this application, was:

	Applicant	Motor carrier proposed to be controlled	Motor carrier proposed to be controlled	Total
Busses	-----	-----	-----	-----
Trucks	-----	-----	-----	-----
Tractors (Set forth in Exhibit E, attached hereto and made a part hereof.)				
Semi-Trailers	-----	-----	-----	-----
Full Trailers	-----	-----	-----	-----
Pole Trailers	-----	-----	-----	-----
Other	-----	-----	-----	-----
Total	-----	-----	-----	-----

IV. That information respecting the nature of the transaction proposed and the terms and conditions thereof, is set forth in Exhibit C, attached hereto and made a part hereof.

V. Since applicant is not a motor carrier and is a person other than a carrier by railroad subject to Part I, Interstate Commerce Act, or a person controlled by such carrier, within the meaning of section 1 (3) (b), or affiliated therewith within the meaning of section 5 (6) there are set forth in Exhibit D, facts and circumstances to establish that the transaction proposed will be consistent with the public interest.

VI. That applicant will submit such additional information as the Commission may require.

VII. That the person to whom correspondence with respect to this application should be addressed is as follows: Burge M. Seymour, President, Associated Transport, Inc., 1775 Broadway, New York, New York.

Wherefore, applicant prays that the Interstate Commerce Commission enter an order approving and authorizing the transaction proposed; and applicant further prays that if approval and authorization of the transaction proposed contemplate the transfer of motor carrier operating authority, the Commission take necessary action to effect such transfer.

Dated this 22nd day of July 1941.

[SEAL]

ASSOCIATED TRANSPORT, INC.,  
By BURGE M. SEYMOUR,

President.

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OATH

STATE OF NEW YORK,

County of New York,

887

Burge M. Seymour makes oath and says that he is the President of the Associated Transport, Inc.; that he is authorized by



said applicant to sign and file with the Interstate Commerce Commission this application and exhibits attached hereto, and to verify the facts and statements contained in said application and exhibits; that he has carefully examined all of such statements contained in said application and exhibits; and that same are true and correct to the best of his knowledge, information, and belief.

**BURGE M. SEYMOUR.**

Subscribed and sworn to before me, a Notary Public in and for the State and County above names, this 22 day of July 1941.

[SEAL]

**JOSEPH C. CATANZARO,**

Joseph C. Catanzaro,

*Notary Public.*

Bronx County Clerk's No. 25. Bronx County Register's No. 21C42. New York County Clerk's No. 132. New York County Register No. 2C125. Term Expires March 30, 1942.

### EXHIBIT A

#### ASSOCIATED TRANSPORT, INC.

#### Information respecting applicant

1. Date and State of incorporation, formation, or organization, whichever applicable: Date March 5, 1941. State Delaware.

2. Name, title, and business address of officers; partners; including limited or silent partners; or trustees; whichever applicable: H. D. Horton, Chairman Board of Directors, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, President and Treasurer, 1775 Broadway, New York, N. Y.; and B. D. Ryan, Secretary, 1775 Broadway, New York, N. Y.

3. Name and business address of directors: H. D. Horton, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, 1775 Broadway, New York, N. Y.; E. J. Arbour, 1179 Main St., Hartford, Conn.; J. J. McCarthy, Olney & Wales St., Taunton, Mass.; 149 J. P. Altwater, 22 Roosevelt St., Buffalo, N. Y.; R. W. Barnwell, Hawking St., Burlington, N. C.; C. C. Brock, Commonwealth Ave., Bristol, Va.; W. L. Moore, 75 Ivy St., N.E., Atlanta, Ga.; and J. S. Arnold, 52 William St., New York, N. Y.

4. Name and business address of 10 principal stockholders; shareholders or other owners, whichever applicable, as of July 22, 1941 (last record date) and their respective holdings: If holdings are in names of nominees, state names of real owners.

Name Street Address, City and State

Extent of Interest  
Class Shares %

## See BMC-22, Exhibit A-1-(d)

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-----  
-----  
-----  
5. Applicant is not a trustee, receiver, or other like representative of a real party in interest.

6. Applicant is not a rail, express, motor, or water carrier.

7. Applicant is the real party in interest and is not engaged in any other form of transportation or activity connected with transportation.

8. Applicant is not part of a system or group of companies.

(b) Applicant is not in control of, nor is it controlled by, or affiliated with, any individual, partnership, corporation, or other organization engaged in any form of transportation or activity connected with transportation.

9. Attached to the original, only, of this application is an exhibit in behalf of applicant, each identified as indicated. Where data are not available, or are inapplicable, it is so stated.

A-2 An authenticated copy of articles of incorporation and by-laws, with all amendments.

A-3 No authenticated copy of annual report to stockholders or shareholders for year preceding date of filing this application is available since applicant was only incorporated on March 5, 1941.

150 10. Attached to original and each copy of this application are the following exhibits in behalf of applicant, each identified as indicated. Where data are not available, or are inapplicable, it is so stated.

A-4 Copy of all resolutions of directors authorizing the transaction proposed, authenticated by proper executive officer; where the charter or bylaws require approval by the stockholders, copies of resolutions of stockholders authorizing the transaction proposed, and indicating the percentage of stock voting for such authorization.

A-5 Copies of all resolutions of stockholders or directors, or duly authorized committee thereof, authenticated by proper executive officer, designating by name and for that purpose the executive officer, by whom the application is signed, verified, and filed.

A-6 Balance sheet statement, in form prescribed, as of the latest available date in the current calendar year. No balance sheets for two preceding calendar years are available since applicant was not then in business.

A-7 No exhibit A-7 setting forth policy and practice with respect to reserves for depreciation of tangible property is furnished, since applicant has no such depreciable property.

A-8 No exhibit A-8 analyzing the intangible property accounts is furnished since applicant has no such property accounts.

A-9 No additions to, or reductions in, tangible property accounts during periods covered by balance sheet statement represent anything other than acquisitions of property or retirements or sales of property.

A-10 Income statement, in form prescribed, for current calendar year of latest available date. No income statement for each of the two preceding calendar years are available since applicant was not then in business.

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## EXHIBIT BMC-45, A-2

## CERTIFICATE OF INCORPORATION OF ASSOCIATED TRANSPORT, INC.

First. The name of the corporation is Associated Transport, Inc.

Second. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent, is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

Third. The nature of the business, or objects or purposes to be transacted, promoted, or carried on are:

To acquire, by purchase, subscription, or otherwise and to own, hold for investment or otherwise, and to use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of stock, bonds, debentures, notes, scrip, securities, evidences of indebtedness, contracts or other obligations of any corporation or corporations, association or associations, domestic or foreign, or any firm or individual or of the United States or any State, Territory, or dependency of the United States or of any foreign government or governmental subdivision; and to issue in exchange therefor, stocks, bonds, or other securities or evidences of indebtedness of this Corporation and while the owner or holder of any such property, to receive, collect, or dispose of the interest, dividends and income and other rights accruing on or from such

property and to possess and exercise in respect thereof all of the rights, powers, and privileges of ownership including all voting powers connected therewith; to loan its moneys, and to acquire, own, hold, lease, sell, and mortgage such real estate and other personal property as may be necessary, convenient, or incident to

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carrying out the purposes aforesaid, or any other purposes of the Company.

To engage in and carry on a general transportation business, other than railroad, to own and operate lines of omnibuses, trucks, taxicabs, and other motor vehicles propelled by gas, electricity, compressed air, or other motor power, on and over public streets, roads, and highways within, between, and without cities, villages and other municipal corporations, and over private rights-of-way, for the carriage of passengers, baggage, merchandise of every kind and description, freight, commodities, and mail (subject to contract with the United States government for the carriage of mail), and for the conduct of messenger and express service in any of the states of the United States of America; to engage in and carry on a general shipping and forwarding business; to contract with railroads, warehouses, steamboat lines and transportation lines of every kind, as well as with corporations, copartnerships, business concerns of every kind, individuals, and the public in general, covering, relating or incidental to, any of the business or kinds of business hereinabove referred to.

153 To build, erect, construct, purchase, hire, or otherwise acquire, buy, sell, own, dispose of, provide, establish, maintain, hold, lease, and operate freight, passenger and express depots and stations, newsstands, restaurants, warehouses, agencies, buildings, factories, structures, offices, houses, works, machinery, plants, terminals, garages and other buildings and structures, and all other property and things of whatsoever kind and nature, real, personal, and mixed, tangible and intangible, including goodwill, within and without the State of Delaware, and in any part of the world, suitable, necessary, useful, or advisable in connection with any of the objects hereinabove or hereafter set forth.

To manufacture, buy, sell, deal in, deal with, lease, and license the use of motor supplies and accessories, machinery, devices, and equipment, of all kinds, whether patented or otherwise, as well as steam, gas, gasoline, petroleum, pneumatic, hydraulic, electrical and other machinery, valves, joints, batteries, fittings, appliances, tools, implements, devices, equipment, and apparatus of every kind and character, and gas, gasoline, oil, materials, supplies, substances, and articles of every kind and character produced or manufactured thereby, or useful or convenient in the manufacture, operation, or repair thereof; and to do a general manufacturing and mercantile business.

154 To take part in or to assume the management, supervision, or control of the business or operations of any company, corporation, association, firm, or person and for that purpose to

appoint, employ, and remunerate any directors, accountants, or other experts or agents to investigate and examine into the condition, prospects, value, character, and circumstances of any business or undertaking and generally of any assets, property or rights.

To aid in any manner any corporation or association, domestic or foreign, or any firm or individual, any shares of stock in which or any bonds, debentures, notes, securities, evidence of indebtedness, contracts or obligations of which are held by or for this company, directly or indirectly, or in which or in the welfare of which the company shall have any interest; to guarantee the payment of dividends on or the capital represented by any shares of the capital stock of any such corporation or association; and to aid or participate in the reorganization, consolidation, or merger of any corporation in which or in the welfare of which the company shall have an interest.

In furtherance and not in limitation of the general powers conferred by the laws of the State of Delaware, and of the purposes hereinbefore stated, it is hereby expressly provided that the company shall also have the following authority and powers, to wit:

To do any and all things herein set forth to the same extent and as fully as natural persons might or could do and in any part of the United States or in any foreign country and as principal, agent, contractor, or otherwise, and either alone or in conjunction with other individuals, firms, associations, syndicates, or bodies politic,

155 To borrow or raise money without limit and upon any terms, for any purpose of the Company or any corporation, association, firm, syndicate, or individual, having a business or property which the company determines to finance, promote, or become interested in; to issue, sell, and dispose of the Company's bonds, debentures, notes, certificates of indebtedness and other obligations, secured or unsecured and however evidenced, upon any terms, including the right to convert the same into shares of any class upon such terms and conditions as the Board of Directors may fix and determine, and as security therefore to mortgage, pledge or grant any charge or impose any lien upon all or any part of the real or personal property, rights, interests or franchises of the Company whether owned by it at the time or thereafter acquired; and to guarantee or become surety with respect to any indebtedness or obligation of any corporation, association, firm, syndicate, or individual in whose business affairs the company may be interested in any manner.



To pay for any property, rights, or interests acquired by the company in cash or other property, rights or interests held by the company or by issuing or assigning and delivering in exchange therefor its own stock, rights or options to purchase or subscribe for its own stock or other securities, its own bonds, debentures, notes, certificates of indebtedness or other obligations or any of them, however evidenced; to purchase or otherwise acquire, hold, sell, pledge, transfer, or otherwise dispose of and to reissue any shares of its own capital stock (so far as may be permitted by law) and its bonds, debentures, notes, or other securities or evidence of indebtedness.

156 To enter into, make, and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic, or government or colony or dependency thereof.

To purchase, hold, sell, and transfer shares of its own capital stock to the extent at any time permitted by law, provided that shares of its own capital stock belonging to it shall not be voted upon, directly or indirectly.

To conduct its business and in connection therewith to maintain one or more offices in the State of Delaware, other states, the District of Columbia, and territories, colonies, and possessions of the United States and in foreign countries.

The foregoing provisions shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Company.

Fourth. The total number of shares of stock which the corporation shall have authority to issue is one million one hundred thousand (1,100,000) of which stock one hundred thousand (100,000) shares of the par value of One Hundred Dollars (\$100.00) each, amounting in the aggregate to Ten Million Dollars (\$10,000,000.00) shall be preferred stock and of which one million (1,000,000) shares of the par value of One Dollar (\$1.00) each, amounting in the aggregate to One Million Dollars (\$1,000,000.00) shall be common stock.

157 The designations, and the powers, preferences, and rights, and the qualifications, limitations or restrictions thereof, in respect of the preferred stock and the common stock are as follows:

The holders of the preferred stock shall be entitled to receive, when and as declared by the board of directors of the corporation either out of the net assets in excess of capital or out of the net profits as permitted by law, preferential dividends at the rate of six per centum (6%) per annum on the par value thereof; and no more, payable annually, semiannually, or quarterly on such

days as may be determined by the board of directors, before any dividend shall be declared or paid upon or set apart for the common stock. Such dividends upon the preferred stock shall be cumulative from the date of issue thereof, so that if dividends for any past dividend period at the rate of six per centum (6%) per annum shall not have been paid thereon, or declared and a sum sufficient for payment thereof set apart, the deficiency shall be fully paid or set apart, but without interest, before any dividend shall be paid upon or set apart for the common stock. Whenever the full dividend on the preferred stock for all past dividend periods shall have been paid, and the full dividend thereon for the then current dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart, dividends upon the common stock may be declared by the board of directors out of the remainder of the net assets in excess of capital or out of the net profits, available for dividends.

158 At any time within five (5) years from the date of issuance, the corporation may at the option of the board of directors, redeem the whole or any part of the outstanding preferred stock on any dividend payment date by paying One Hundred Ten Dollars (\$110.00) for each share thereof, and thereafter, by paying One Hundred Five Dollars (\$105.00) for each share thereof, together with a sum of money equivalent to dividends at the rate of six per centum (6%) per annum on the par value thereof from the date or dates on which the dividends on said shares of preferred stock so to be redeemed become cumulative to the date fixed for such redemption, less the amount of dividends theretofore paid thereon. Notice of such election to redeem shall, not less than thirty (30) days prior to the dividend date upon which the stock is to be redeemed, be mailed to each holder of stock so to be redeemed at his address as it appears on the books of the corporation. In case less than all of the outstanding preferred stock is to be redeemed, the amount to be redeemed and the method of effecting such redemption, whether by lot or pro rata or otherwise, may be determined by the board of directors. If on or before the redemption date named in such notice, the funds necessary for such redemption shall have been set aside by the corporation so as to be available for payment on demand to the holders of the preferred stock so called for redemption, then, notwithstanding that any certificate of the preferred stock so called for redemption shall not have been surrendered for cancellation, the dividends thereon shall cease to accrue from and after the date of redemption so designated, and all rights with respect to such preferred stock so called for redemption, including any right to vote or otherwise participate

in the determination of any proposed corporate action, shall forthwith after such redemption date cease and determine, except only the right of the holder to receive the redemption price therefor, but without interest. Stock redeemed pursuant to the provisions hereof shall not be reissued and no preferred stock shall be issued in lieu thereof or in exchange therefor.

In the event of any liquidation, dissolution or winding up of the affairs of the corporation, whether voluntary or involuntary, the holders of the preferred stock shall be entitled, before any assets of the corporation shall be distributed among or paid over to the holders of the common stock; to be paid one hundred five Dollars (\$105.00) per share, together with a sum of money equivalent to dividends at the rate of six per centum (6%) per annum on the par value thereof, from the date or dates upon which dividends on such preferred stock became cumulative to the date of payment thereof, less the amount of dividends theretofore paid thereon. After the making of such payments to the holders of the preferred stock, the remaining assets of the corporation shall be distributed among the holders of the common stock alone, share and share alike. If, upon such liquidation, dissolution or winding up, the assets of the corporation distributable as aforesaid among the holders of the preferred stock shall be insufficient to permit of the payment to them of said amount, the entire assets shall be distributed ratably among the holders of the preferred stock.

The holders of the preferred stock shall have the right, at any time within the first three (3) years after the date of issuance, to convert said preferred stock into common stock of the corporation at the rate of four (4) shares of common stock for one (1) share of preferred stock; for the next succeeding three (3) years at the rate of three and one-third ( $3\frac{1}{3}$ ) shares of common stock for one (1) share of preferred stock, and, thereafter, at the rate of three (3) shares of common stock for one (1) share of preferred stock.

160 Except as expressly required by law or as herein otherwise provided, the holders of the preferred stock shall have no voting power nor shall they be entitled to notice of meetings of stockholders, all rights to vote and all voting power being vested exclusively in the holders of the common stock.

If, at any time, however, and whenever, dividends upon the preferred stock shall be in default and unpaid in whole or in part for a period of two (2) years, the holders of the preferred stock shall have the same voting power as the holders of the common stock, to wit: one vote for each share of stock, and shall be entitled to receive notice of meetings of stockholders;

and such voting power shall so continue to vest in the holders of the preferred stock until all arrears in the payment of cumulative dividends upon the preferred stock shall have been paid and the dividends thereon for the then current dividend period shall have been declared and the funds for the payment thereof set aside. However, if and when thereafter the defaulted dividends shall be paid in full and provisions made for the current dividend as herein provided (and such payments shall be made as promptly as shall be consistent with the best interests of the corporation) the holders of the preferred stock shall be divested of such voting power and the voting power shall then revert exclusively in the holders of the common stock; but subject always to the same provision for the vesting of such voting power in the holders of the preferred stock in case of any similar default or defaults in the payment of dividends upon the preferred stock for a period of two (2) years, and the revesting of such entire voting power in the holders of the common stock in the event that such default or defaults shall be cured as above provided.

161 At all elections of directors each stockholder at the time entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit.

Fifth. The amount of capital with which the corporation will commence business is One Thousand Dollars (\$1,000.00).

Sixth. The names and places of residence of the incorporators are as follows: R. F. Lewis, Wilmington, Delaware; L. H. Herman, Wilmington, Delaware; Walter Lenz, Wilmington, Delaware.

Seventh. The corporation is to have perpetual existence.

Eighth. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Ninth. In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the bylaws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

162 By resolution or resolutions, passed by a majority of the whole board to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in said resolution or resolutions or in the bylaws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the bylaws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease, or exchange all of the property and assets of the corporation, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

The corporation may in its bylaws confer powers upon its board of directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

163 Tenth. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 4407 of the Revised Code of 1935 of said State, or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of



this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this corporation, as the case may be, and also on this corporation.

164 Eleventh. Meetings of stockholders may be held without the State of Delaware, if the bylaws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be from time to time designated by the board of directors.

Twelfth. The corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation in pursuance of the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 5th day of March A. D. 1941.

R. F. LEWIS. [SEAL]

L. H. HERMAN. [SEAL]

WALTER LENZ. [SEAL]

165 STATE OF DELAWARE,  
COUNTY OF NEW CASTLE.

SS:

Be it remembered, That on this 5th day of March A. D. 1941, personally came before me: Harold E. Grantland, a Notary Public for the State of Delaware, R. F. Lewis, L. H. Herman, and Walter Lenz, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

HAROLD E. GRANTLAND,  
Harold E. Grantland,

*Notary Public.*

Appointed Jan. 11, 1941. State of Delaware. Term Two Years.

## STATE OF DELAWARE

## Office of Secretary of State

I, Earle D. Willey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Associated Transport, Inc.," as received and filed in this office the fifth day of March A. D. 1941, at 3 o'clock P. M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover, this sixth day of March in the year of our Lord one thousand nine hundred and forty-one.

[SEAL]

EARLE D. WILLEY,  
Secretary of State.

## EXHIBIT BMC-45 A-2

## ASSOCIATED TRANSPORT, INC.

## Certificate of Amendment of Certification or Incorporation

Associated Transport, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

First. That the board of directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the certificate of incorporation of said corporation:

Resolved that the certificate of incorporation of Associated Transport, Inc., be amended by striking out the seventh, eighth, and ninth paragraphs of the Article thereof number "fourth" and by inserting in lieu thereof the following paragraph, to wit:

"At all meetings of the stockholders, and on all other proceedings requiring a vote of the stockholders, each holder of preferred stock and each holder of common stock of the corporation shall have one (1) vote for each share of such stock or stocks standing in his name on the books of the corporation; provided, however, that at all elections of directors each stockholder at the time entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two (2) or more of them, as he may see fit."

Second. That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance

with the provisions of Section 81 of the General Corporation Law of Delaware, and filed with the corporation on the 15th day of May 1941.

Third. That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 26 and 81 of the General Corporation Law of Delaware.

In witness whereof, said Associated Transport, Inc., has caused its corporate seal to be hereunto affixed and this certificate to be signed by Burge M. Seymour, its President, and Marco F. Hellman, its Secretary, this 15th day of May 1941.

ASSOCIATED TRANSPORT INC.

By B. M. SEYMOUR,

*President.*

MARCO F. HELLMAN,

*Secretary.*

169 STATE OF NEW YORK,

*County of New York ss:*

Be it remembered that on this 15th day of May, A. D. 1941, personally came before me, Joseph C. Catanzaro, a Notary Public in and for the County and State aforesaid, Burge M. Seymour, President of Associated Transport, Inc., a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said Burge M. Seymour, as such President, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the said Secretary of said corporation to said foregoing certificate are in the handwriting of the said President and Secretary of said corporation, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

JOSEPH C. CATANZARO,

*Notary Public, Bronx County.*

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STATE OF DELAWARE

Office of Secretary of State

I, Earle D. Willey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Amendment of Certificate of Incorporation of the "Associated Transport, Inc." as received and filed in

this office the twenty-third day of May A. D. 1941, at 11 o'clock A. M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover, this twenty-third day of May in the year of our Lord one thousand nine hundred and forty-one.

[SEAL]

EARLE D. WILLEY,  
*Secretary of State.*

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#### BYLAWS

#### Offices

1. The principal office shall be in the City of Wilmington, County of New Castle, State of Delaware, and the name of the resident agent in charge thereof is The Corporation Trust Company.

2. The corporation may also have an office in the City of New York, State of New York, and also offices at such other places as the board of directors may from time to time appoint or the business of the corporation may require.

3. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

#### Stockholders' meetings

4. All meetings of the stockholders for the election of directors shall be held at the office of the corporation in New York. Special meetings of stockholders for any other purpose may be held at such place and time as shall be stated in the notice of the meeting.

5. An annual meeting of stockholders, after the year 1941, shall be held on the fifteenth day of March in each year if not a legal holiday, and if a legal holiday, then on the next secular day following, at 11:00 o'clock A. M., when they shall elect by a plurality vote, by ballot, a board of directors, and transact such other business as may properly be brought before the meeting.

172 I, B. D. Ryan, Secretary of Associated Transport, Inc., a Delaware corporation, do hereby certify that the annexed copy of the Bylaws of Associated Transport, Inc., is a true and correct copy of the Bylaws of said corporation.

Witness my hand and seal of the corporation, this 17th day of July 1941.

B. D. RYAN.

173 6. The holders of a majority of the stock issued and outstanding, and entitled to vote thereat, present in person, or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, by the certificate of incorporation or by these bylaws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person, or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present any business may be transacted at the meeting as originally notified.

7. At any meeting of the stockholders every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation, and except where the transfer books of the corporation shall have been closed or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, no share of stock shall be voted on at any election of directors which shall have been transferred on the books of the corporation within twenty days next preceding such election of directors. At all elections of directors each stockholder at the time entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit.

174 8. Written notice of the annual meeting shall be served upon or mailed to each stockholder entitled to vote thereat at such address as appears on the stock books of the corporation, at least ten days prior to the meeting.

9. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, with the residence of each and the number of voting shares held by each, shall be prepared by the secretary and filed in the office where the election is to be held, at least ten days before every election, and shall at all times, during the usual hours for business and during the whole time of said election, be open to the examination of any stockholder.



10. Special meetings of the stockholders, for any purposes, unless otherwise prescribed by statute, may be called by the president and shall be called by the president or secretary at the request in writing of a majority of the board of directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

11. Business transacted at all special meetings shall be confined to the objects stated in the call.

12. Written notice of a special meeting of stockholders, stating the time and place and object thereof, shall be served upon or mailed at least five days before such meeting to each stockholder entitled to vote thereat at such address as appears on the books of the corporation.

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#### Directors

13. The number of directors which shall constitute the whole board shall be not less than three but may be increased to fifteen. The first board shall consist of three directors. Directors need not be stockholders. They shall be elected at the annual meeting of the stockholders, and each director shall be elected to serve until his successor shall be elected and shall qualify.

14. The directors may hold their meetings and keep the books of the corporation, except the original or duplicate stock ledger, outside of Delaware, at the office of the corporation in the City of New York, New York, or at such other places as they may from time to time determine.

15. If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, a majority of the remaining directors, though less than a quorum shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred or until the next election of directors.

16. The property and business of the corporation shall be managed by its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these by-laws directed or required to be exercised or done by the stockholders.

#### Committee of directors

17. The Board of directors may, by resolution or resolutions passed by a majority of the whole board, designate one or more committees, each committee to consist of two or more of the direc-

176      tors of the corporation, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors.

18. The committees shall keep regular minutes of their proceedings and report the same to the board when required.

#### Compensation of directors

19. Directors, as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board; provided that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

20. Members of special or standing committees may be allowed like compensation for attending committee meetings.

#### Meetings of the board

21. The first meeting of each newly elected board shall be held at such time and place either within or without the State of Delaware as shall be fixed by the vote of the stockholders at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting; provided a majority of the whole board shall be present; or they may meet at such place and time as shall be fixed by the consent in writing of all the directors.

177      22. Regular meetings of the board may be held without notice at such time and place either within or without the State of Delaware as shall from time to time be determined by the board.

23. Special meetings of the board may be called by the president on five days' notice to each director, either personally or by mail or by telegram; special meetings shall be called by the president or secretary in like manner and on like notice on the written request of two directors.

24. At all meetings of the board a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the

act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation or by these bylaws.

### Officers

25. The officers of the corporation shall be chosen by the directors and shall be a president, a vice president, a secretary, and a treasurer. The board of directors may also choose additional vice presidents, assistant secretaries and assistant treasurers. The secretary and treasurer may be the same person, or the vice president may hold at the same time the office of secretary or treasurer.

26. The board of directors, at its first meeting after each annual meeting of stockholders shall choose a president from its members, and one or more vice presidents, a secretary, and a treasurer, none of whom need be a member of the board.

178 27. The board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

28. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

29. The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the board of directors.

### The president

30. The president shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors, shall be ex officio a member of all standing committees, shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the board are carried into effect.

31. He shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the corporation, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

## Vice presidents

32. The vice presidents in the order of their seniority shall, in the absence of disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties as the board of directors shall prescribe.

## The secretary and assistant secretaries

33. The secretary shall attend all sessions of the board and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. He shall keep in safe custody the seal of the corporation and, when authorized by the board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the treasurer or an assistant secretary.

34. The assistant secretaries in order of their seniority shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties as the board of directors shall prescribe.

## The treasurer and assistant treasurers

35. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors.

180 36. He shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the president and directors, at the regular meetings of the board, or whenever they may require it, an account of all his transactions as treasurer and of the financial condition of the corporation.

37. If required by the board of directors, he shall give the corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the board for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all

books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

38. The assistant treasurers in the order of their seniority shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer and shall perform such other duties as the board of directors shall prescribe.

#### Certificates of stock

39. The certificates of stock of the corporation shall be numbered and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the president or a vice president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary. The designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations, or restrictions of such preferences and/or rights shall be set  
181 forth in full or summarized on the face or back of the certificates which the corporation shall issue to represent such class or series of stock. Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified. If the corporation has a transfer agent or an assistant transfer agent or a transfer clerk acting on its behalf and a registrar, the signature of any such officer may be facsimile.

#### Transfers of stock

40. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

#### Closing of transfer books

41. The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding fifty days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect or for a period of not exceeding fifty days in connection with obtaining the consent of

stockholders for any purpose; provided, however, that in lieu of closing the stock transfer books as aforesaid, the board of directors may fix in advance a date, not exceeding fifty days preceding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and in such case such stockholders, and only such stockholders as shall be stockholders of record on the date so fixed, shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

#### Registered stockholders

42. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

#### Lost certificate

43. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.



### Checks

44. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

### Fiscal Year

45. The fiscal year shall begin the first day of January in each year.

### Dividends

46. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock.

47. Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interest of the corporation, and the directors may abolish any such reserve in the manner in which it was created.

### Directors' annual statement

48. The board of directors shall present at each annual meeting and when called for by vote of the stockholders at any special meeting of the stockholders, a full and clear statement of the business and condition of the corporation.

### Notices

49. Whenever under the provisions of these bylaws notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in the post office or letter box, in a post-paid sealed wrapper, addressed to such director or stockholder at such address as appears on the books of the corporation, or, in default of other address, to such director or stockholder at the General Post Office in the City of Wilmington, Delaware, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

50. Any notice required to be given under these bylaws may be waived in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein.

### Amendments

51. These bylaws may be altered or repealed at any regular meeting of the stockholders or at any special meeting of the stockholders at which a quorum is present or represented, provided notice of the proposed alteration or repeal be contained in the notice of such special meeting, by the affirmative vote of a majority of the stock entitled to vote at such meeting and present 185 or represented thereat, or by the affirmative vote of not less than two-thirds of the board of directors at any regular meeting of the board or at any special meeting of the board if notice of the proposed alteration or repeal be contained in the notice of such special meeting; provided, however, that no change of the time or place for the election of directors shall be made within sixty days next before the day on which such election is to be held, and that in case of any change of such time or place, notice thereof shall be given to each stockholder in person or by letter mailed to his last known post office address at least twenty days before the election is held.

### Chairman of the board.

52. Notwithstanding anything in these bylaws to the contrary, there is hereby created and established the office of Chairman of the Board. This office shall be filled by a majority vote of the Board of Directors and the person so elected shall hold office for one year or until the next annual meeting of the Board of Directors or until his successor shall have been elected and qualified.

The Chairman of the Board shall act for and on behalf of the Board of Directors in carrying out the policies and directions of the Board as the same may be from time to time determined upon.

The Chairman of the Board shall have general supervision of the affairs of the company and shall approve all contracts, agreements or obligations involving the sum of \$500.00 or more before the same shall become binding upon the company or until prior approval of the same shall have been given by a majority vote of the Board of Directors.

186. The Chairman of the Board shall preside at all meetings of the Board of Directors and shall, at such meetings, make a detailed report of all his actions in connection with his office as Chairman of the Board.

The Chairman of the Board may be removed from office, for cause, by a majority vote of the Board of Directors.

I, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct excerpt from the minutes of a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June 1941:

"The president presented to the board of directors proposed agreements for the purchase of capital stock (hereinafter referred to as stock acquisition agreements) as follows:

Agreement for the purchase of the capital stock of Horton Motor Lines, Incorporated.

Agreement for the purchase of the capital stock of Consolidated Motor Lines, Incorporated.

Agreement for the purchase of the capital stock of Barnwell Brothers, Incorporated.

Agreement for the purchase of the capital stock of McCarthy Freight System, Inc.

Agreement for the purchase of the capital stock of M. Moran Transportation Lines, Inc.

Agreement for the purchase of the capital stock of Southeastern Motor Lines, Incorporated.

Agreement for the purchase of the capital stock of The Transportation, Incorporated.

Agreement for the purchase of the capital stock of Southern New England Terminals, Inc.

Agreement for the purchase of the capital stock of Barnwell Warehouse & Brokerage Company.

Agreement for the purchase of the capital stock of Conger Realty Company.

Agreement for the purchase of the capital stock of Brown Equipment and Manufacturing Company.

Upon motion duly made and seconded, it was unanimously

188 Resolved that said agreements be and they are hereby approved and that the president be authorized to execute all of said agreements and the secretary be authorized to attest and to affix the corporate seal to such of said agreements as she may be directed by the president."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

(Signed) B. D. RYAN,  
Secretary.

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## EXHIBIT A-5

I, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct copy of a resolution unanimously adopted at a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June 1941:

"Resolved that B. M. Seymour, president of this corporation is hereby authorized to cause to be prepared, to sign, verify the facts and circumstances, and cause to be filed with the Interstate Commerce Commission, such application or applications and amendments thereto, together with all appropriate exhibits as may be necessary, desirable or advisable for the required authority to bring about the combined ownership, control and consolidation contemplated by certain contracts the execution of which has this day been authorized by this board."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

B. D. RYAN,  
Secretary.

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## EXHIBITS A-4 A-5

I, J. P. Altwater, Acting Secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct excerpt from the minutes of a special meeting of the directors of said company duly held in the City of New York on the 23rd day of July 1941:

"The President presented to the Board of Directors agreement for the acquisition of capital stock of Arrow Carrier Corporation.

"The President also presented to the Board of Directors executed applications of this corporation to the Interstate Commerce Commission under Forms BMC-45 and BMC-22, in which applications the aforesaid acquisition of capital stock of Arrow Carrier Corporation was included.

"Upon motion duly made and seconded, it was

"Resolved, that the said agreement for the acquisition of capital stock of Arrow Carrier Corporation is expressly approved, ratified and confirmed.

"Further Resolved, that the action of B. M. Seymour, President of this corporation, in including such company in the aforesaid applications, is hereby approved, ratified and confirmed, and that the said President is hereby directed to file

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## MCLEAN TRUCKING CO., INC., ET AL.

such applications forthwith with the Interstate Commerce Commission.

Witness my hand and the seal of the corporation, this 23rd day of July 1941.

[CORPORATE SEAL]

JOHN P. ALTWATER,  
*Acting Secretary.*

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## EXHIBIT A-6

## ASSOCIATED TRANSPORT, INC.

## Balance Sheet as of June 30, 1941

Cash in Bank	\$36,446.39
Notes Receivable	15,620.00
Deferred Expenses	8,135.61
Total Assets	60,202.00
Common Stock Issued	60,202.00

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## EXHIBIT A-10

## ASSOCIATED TRANSPORT, INC.

## Analysis of Cash Receipts and Disbursements March 5, 1941, to June 30, 1941

Cash Receipts:	
6/13/41 Sales of Stock	\$44,582.00
Cash Disbursements:	
6/18/41 Corporation Trust Co.—Fees	78.23
6/18/41 Ryan-West Banknote Co. Inc.—Printing	37.18
6/18/41 B. M. Seymour—Salary	2,600.00
6/19/41 B. Rubin—Printing	529.20
6/20/41 Nordlinger, Riegelman & Cooper—Legal Fees	3,500.00
6/23/41 B. M. Seymour—Salary	2,000.00
Total Cash Disbursements	8,135.61
Cash Balance June 30, 1941	36,446.39

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## EXHIBIT B

## INFORMATION RESPECTING CARRIERS CONTROL OF WHICH IS PROPOSED TO BE ACQUIRED

1. Date and State of incorporation, formation, or organization, whichever applicable:

See Exhibit B-7

2. There is no financial or other relationship, direct or indirect, existing between applicant and carriers, control of which is proposed to be acquired.

3. For brief description of nature, extent, and scope of motor carrier operations of carriers, control of which is proposed to be acquired; and number or numbers assigned by Interstate Commerce Commission to operating authority or application for same; and status of latter, see Exhibit B-8.

3a. The entire operating rights of the carriers, authority for the control and consolidation of which are herein applied for, are sought to be transferred and merged.

4. Attached to original and each copy of this application are the following exhibits in behalf of motor carriers of which control is proposed to be acquired, identified each as indicated. Where data requested are not available, or are inapplicable, it is so stated.

B-2—Balance sheet statement, in form prescribed, as of latest available date in current calendar year and as of the close of each of the two preceding calendar years.

B-3—Statement setting forth policy and practice with respect to reserve for depreciation of tangible property, including rates by classes of property, and whether the reserve account represents an actual deposit of funds.

B-4—Analysis of intangible property accounts including for each item date of acquisition, source of authority, account in which presently recorded, amounts thereof, reserve, and policy and practice followed with respect to amortization of intangible property.

B-5—Statement of additions to, or reductions in, tangible property accounts during periods covered by balance sheet statement representing anything other than acquisitions of property, and full explanation of amounts and nature of charges and accounts affected.

B-6—Income statement, in form prescribed, for current calendar year to the latest available date and for each of the two preceding calendar years.

B-7—Statement concerning incorporation, stock holdings, affiliates or subsidiaries, and other information about companies, control of which is proposed to be acquired.

B-8—Brief description of nature, extent and scope of motor carrier operations of carriers, control of which is proposed to be acquired.



EXHIBIT B-2

**ASSOCIATED TRANSPORT, INC.**

Comparative Balance Sheet of the Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940, and December 31, 1939

	Consolidated Motor Lines, Inc.			McCarthy Freight System, Inc.			M. Morgan Transportation Lines, Inc.				
Assets	May 17, 1941		12/31/40 per books	4/10/41 Adjusted	5/17/41 per books	12/31/40 per books	12/31/39 per books	April 26, 1941		12/28/40 per books	12/30/39 per books
	Adjusted	Per books						Adjusted	Per books		
Current assets:											
Cash	\$216,229.13	\$216,264.16	\$118,263.09	\$107,364.67	\$55,164.81	\$61,913.71	\$28,068.05	\$80,398.75	\$79,042.00	\$85,032.75	\$114,392.71
Working funds	11,985.03	11,959.00	12,255.00	11,200.00	7,765.00	7,055.00	7,900.00	553.26	2,540.00	2,475.00	2,330.00
Special deposits	965.00	965.00	715.00	1,055.00	7,357.00	6,787.00	9,056.36	35.00	95.00	95.00	103.00
Notes receivable	36,420.00	36,421.05	3,300.00								
Accounts receivable	309,102.71	306,102.71	247,324.58	227,637.63	174,460.69	156,931.24	103,075.83	324,267.54	302,016.92	199,803.78	104,524.54
Total notes and accounts receivable	342,522.71	342,523.76	250,824.58	227,637.63	174,460.69	165,931.24	103,075.83	324,267.54	302,016.92	199,803.78	104,524.54
Less: Reserve for uncollectible accounts	8,389.94	47,517.96	44,130.96	28,510.08	102.62	1,279.69	1,500.00	5,031.01	9,250.41	34,200.12	25,852.98
Notes and accounts receivable net	334,132.77	295,005.80	206,693.62	199,127.55	174,358.07	155,651.55	101,575.83	319,236.53	292,766.51	155,603.66	78,672.46
Materials & supplies	517,118.14	124,014.57	108,840.47	73,963.35	31,849.95	20,582.88	19,630.97	36,076.56	32,740.00	28,768.05	25,498.00
Other current assets	11,441.05	11,440.00	10,907.97	677.92							
Total current assets	691,901.12	629,699.23	457,445.15	363,288.49	322,312.41	294,464.83	245,700.14	436,510.04	407,757.01	271,977.46	230,986.17
Tangible property:											
Carrier operating property	1,508,045.49	1,507,633.75	1,327,056.33	1,212,464.50	929,908.56	856,487.05	799,127.18	923,312.43	922,882.99	856,833.97	706,551.09
Less: Reserve for depreciation & amortiz	731,612.58	756,799.16	751,718.46	621,793.73	408,082.95	513,942.73	540,272.00	438,075.93	447,442.70	498,455.64	464,730.19
Net carrier operating property	776,432.91	750,834.59	575,337.87	590,670.76	431,916.03	396,946.75	346,215.05	485,236.50	475,440.29	358,378.33	241,820.90





Investments and advances to affiliates and others	21,801.44	112,017.72	17,688.44	12,275.00	8,563.29	8,563.29	8,563.29	2,500.00	112.80	112.80	115.80
Prepayments and other deferred debits	159,314.55	73,854.43	74,354.76	63,435.77	79,359.48	79,359.48	79,359.48	46,431.78	62,639.39	38,674.39	27,943.79
Total assets	2,200,108.22	2,122,324.48	1,956,273.49	1,592,782.18	960,064.53	972,571.85	998,064.33	623,319.11	425,317.27	404,702.51	297,703.24

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Assets	Southeastern Motor Lines, Inc.				Arrow Carrier Corporation				Total carrier companies			
	Apr. 30, 1941		12/31/40		Apr. 30, 1941		12/31/40		Apr. 30, 1941		12/31/40	
	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
Current assets:												
Cash	\$6,533.19	\$6,618.78	\$11,212.67	\$7,130.37	\$62,452.69	\$62,452.69	\$21,454.81	\$19,907.32	\$510,497.82	\$490,917.14	\$535,549.94	\$468,231.51
Working funds					8,798.00	3,265.00	3,245.00	3,815.74	70,374.38	77,458.23	71,953.78	64,530.22
Special deposits	745.00	745.00	745.00	470.00	527.50	827.80	577.50	195.80	19,472.26	25,965.28	34,833.45	21,712.51
Notes receivable									37,257.33	37,258.38	3,897.33	1,802.79
Accounts receivable	44,543.23	44,759.80	25,360.05	24,802.82	128,425.53	125,425.53	96,590.33	99,329.04	1,735,092.70	1,578,675.11	1,319,251.26	1,019,336.14
Total notes and accounts receivable	44,543.23	44,759.80	25,360.05	24,802.82	128,425.53	125,425.53	96,590.33	99,329.04	1,772,350.03	1,615,933.49	1,323,148.59	1,021,138.93
Less: Reserve for uncollectible accounts	797.29	655.83	1,004.34	864.34	2,621.43				42,819.43	79,262.36	98,810.60	64,242.69
Notes and accounts receivable-net	43,745.94	44,103.97	24,355.61	23,948.48	125,804.10	125,425.53	96,590.33	99,329.04	1,729,530.60	1,536,671.13	1,224,337.99	956,706.24
Materials & supplies	8,166.08	8,166.08	8,957.21	3,534.19	41,095.70	14,872.63	24,573.03	12,207.64	429,385.16	416,622.30	346,923.16	274,035.69
Other current assets									31,822.80	16,365.30	86,501.15	78,520.53
Total current assets	59,190.21	59,633.83	45,271.49	35,083.04	233,174.99	206,573.35	146,449.67	134,455.24	2,791,083.02	2,578,929.47	2,126,106.47	1,864,428.70

Comparative Balance Sheet of the Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940, and December 31, 1939—Continued

Assets	Southeastern Motor Lines, Inc.				Arrow Carrier Corporation				Total carrier companies			
	Apr. 30, 1941		12/31/40		Apr. 30, 1941		12/31/40		Apr. 30, 1941		12/31/40	
	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
Tangible property:												
Carrier operating property:												
Less: Reserve for depreciation & amortiz.	\$116,556.12	\$116,556.12	\$98,907.74	\$59,398.41	\$1,671,254.42	\$1,670,446.47	\$1,704,734.93	\$1,491,467.41	\$8,408,903.28	\$8,333,138.55	\$7,853,739.24	\$6,906,503.81
Net carrier operating property	28,964.66	30,201.67	24,643.71	10,187.99	961,587.46	965,206.42	940,402.13	847,661.09	3,722,482.90	3,697,591.50	3,773,931.90	3,400,126.12
Noncarrier operating property	87,001.46	86,354.45	62,264.03	49,210.42	709,666.96	705,240.05	764,322.80	843,806.32	4,086,409.38	4,035,547.05	4,099,807.74	3,406,377.60
Less: Reserve for depreciation					58,651.08	58,651.08	27,818.88		62,221.37	62,221.57	31,389.37	3,472.45
Net noncarrier operating property					84.12	84.12	77.65		2,969.48	2,969.06	2,885.21	2,645.92
Total tangible property	87,001.46	86,354.45	62,264.03	49,210.42	709,666.96	705,240.05	764,322.80	843,806.32	4,086,409.38	4,035,547.05	4,099,807.74	3,406,377.60
Intangible property												
Investments & advances to affiliates & others	87,001.46	86,354.45	62,264.03	49,210.42	709,666.96	705,240.05	764,322.80	843,806.32	4,086,409.38	4,035,547.05	4,099,807.74	3,406,377.60
Prepayments and other deferred debits	510.00	510.00	510.00	11,694.33	30,033.23	30,033.23	31,420.35	23,569.43	126,121.04	126,121.04	130,502.75	78,576.07
Total assets	18,284.12	8,444.01	9,043.24	4,584.79	111,950.02	85,795.46	70,980.37	56,432.02	874,476.50	636,191.35	660,283.19	137,221.58
	165,585.79	165,470.46	124,884.26	109,512.56	1,113,358.98	1,086,839.05	1,040,914.42	1,038,503.01	8,614,211.45	8,413,405.57	7,944,030.91	5,961,674.93



197	Consolidated Motor Lines, Inc.				McCarthy Freight System, Inc.				M. Moran Transportation Lines, Inc.			
	May 17, 1941		12/31/40 per books	12/31/39 per books	4/19/41 Adjusted	5/17/41 per books	12/31/40 per books	12/31/39 per books	April 26, 1941		12/28/40 per books	12/30/39 per books
	Adjusted	Per books							Adjusted	Per books		
Liabilities and capital												
Current liabilities:												
Accounts payable	\$196,400.44	\$196,400.44	\$192,337.91	\$225,503.61	\$155,065.15	\$133,763.69	\$108,404.00	\$105,815.46	\$226,430.10	\$128,119.87	\$291,269.36	\$220,305.48
Notes payable			3,500.00	5,000.00	14,000.00	23,700.00	26,230.00	41,381.86				
Wages payable	49,318.83	49,918.83	52,775.46	35,336.17	21,792.69	23,434.90	25,019.76	16,256.92	35,405.94	35,405.94	23,759.30	13,680.01
C. O. D.'s on Freight	604.99	604.99	1,871.97	1,377.48	8,305.32	11,931.26	6,014.40	6,059.51	1,342.15	1,342.15	605.59	2,255.56
Texas account	167,203.89	144,315.36	114,358.46	58,703.65	96,301.24	98,907.61	67,334.04	31,014.18	64,077.35	77,879.01	38,072.07	14,516.26
Other current liab	89,741.61	89,741.61	90,000.81	47,498.58	8,577.26	3,550.69	5,360.12	6,178.77	2,546.34	3,346.20	6,149.61	3,875.41
Total current liab	503,959.76	481,071.33	424,884.61	373,509.49	304,041.66	295,318.15	238,532.41	206,686.70	330,401.98	245,069.17	339,855.03	254,121.72
Equipment & other long term obligations:												
Equipment obligations	331,515.67	331,515.67	175,947.20	321,927.10	147,829.44	157,530.44	123,897.83	172,737.49	294,533.00	294,533.00		
Other long term oblig	58,722.65	58,722.65	20,215.00		14,700.00	5,100.00	6,000.00	16,867.35				
Total equipmt. & other long term oblig	390,238.32	390,238.32	196,162.20	321,927.10	162,529.44	162,630.44	129,897.83	189,604.84	294,533.00	294,533.00		
Advances from affiliated companies & others						3,119.42	4,940.42	6,580.15			116,961.27	92,541.59
Reserves for injury, loss and damage	36,061.61	36,061.61	25,353.45	17,590.90	3,215.25	2,121.75	2,155.04	2,440.34	9,301.42	5,029.60	49,706.06	26,821.01
Deferred income (3/17/41)	47,725.27											
Capital stock:												
Preferred, conv. stk	11,445.00	11,445.00	11,445.00	11,445.00	101,000.00	101,000.00	101,000.00	101,000.00	35,400.00	35,400.00	35,400.00	35,400.00
Common, full stk												
Capital stk. subscribed	11,445.00	11,445.00	11,445.00	11,445.00	101,000.00	101,000.00	101,000.00	101,000.00	35,400.00	35,400.00	35,400.00	35,400.00
Total capital stk												
Unpaid, undated surplus:												
Unearned surplus	479,486.04	479,486.04	419,486.04	419,486.04	41,894.70	41,894.70	41,894.70	41,894.70				
Unearned surplus	316,915.12	346,301.28	143,104.57	35,940.69	289,970.28	271,040.17	161,691.10	72,806.89	318,966.65	304,245.80	174,137.16	26,735.10
Earned surplus	735,501.16	765,787.29	562,590.61	455,426.07	331,864.95	312,934.87	203,565.80	114,701.59	318,966.65	304,245.80	174,137.16	156,019.31
Total undepreciated surplus	746,946.16	777,252.29	574,690.61	466,871.07	432,864.95	413,934.87	304,586.90	215,701.59	354,366.65	339,545.80	209,557.16	194,419.31
Total capital and surplus	1,724,941.12	1,644,603.45	1,220,435.57	1,179,808.56	902,651.30	877,154.63	680,120.36	621,022.62	1,112,564.22	1,009,759.14	756,080.96	577,965.63
Total liabilities and capital												

Although the assets of Consolidated Motor Lines, Inc. and McCarthy Freight System, Inc., and Moran Transportation Lines, Inc., are reflected as of the dates indicated, the surpluses have been adjusted to Apr. 30, 1941.

Comparative Balance Sheet of the Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940, and December 31, 1939—Continued

196	Liabilities and capital	Horton Motor Lines, Inc.			Barnwell Brothers, Inc.			Transportation, Inc.		
		4/30/41		12/31/39 per books	4/30/41		12/31/40 per books	4/30/41		12/31/39 per books
		Adjusted	Per books		Adjusted	Per books		Adjusted	Per books	
Current liabilities:	Accounts payable	\$128,956.51	\$125,726.92	\$118,510.97	\$143,994.48	\$143,994.48	\$102,124.88	\$207,887.67	\$204,975.02	\$155,106.66
	Notes payable	39,728.42	39,728.42	26,199.44	85,127.56	85,127.56	98,338.94	91,804.46	91,804.46	85,790.87
	Wages payable	44,289.66	44,289.66	32,513.40	13,861.25	18,430.80	6,529.16	6,771.66	6,771.66	19,731.13
	C. O. D's unremitted				(50.39)	(50.39)	20.98			7,196.60
	Taxes accrued	169,067.08	197,432.57	159,638.19	51,128.87	48,500.90	22.90	6,460.54	6,460.54	11,803.92
Other current liabilities		3,435.92	4,517.86	7,055.26	1,063.39	3,462.58	359.56	21,615.05	10,645.96	15,278.45
	Total current liabilities	385,499.68	411,685.72	341,847.84	265,155.16	330,878.96	177,907.56	336,465.14	331,636.72	293,534.29
Equipment and other long term obligations:	Equipment obligations			16,640.00	106,983.47	106,983.47	99,205.63	106,519.86	107,464.37	59,410.24
	Other long term obligations				37,750.00	37,750.00	43,250.00	1,218.10	1,218.10	5,420.38
Advances from affiliated companies and others:	Total equipment and other long term obligations			16,640.00	144,733.47	144,733.47	142,455.63	107,737.96	108,682.47	64,830.62
	Deferred income (5/1-17/41)	183,930.17	183,930.17	199,985.38	9,164.86	9,164.86		28,767.17	29,277.17	14,000.00
Capital stock:	Preferred capital stock	53,320.00	53,320.00	33,960.00	32,330.00	32,330.00	32,300.00	25,000.00	25,000.00	70,000.00
	Common capital stock	212,080.00	212,080.00	212,080.00	100,000.00	100,000.00	100,000.00	25,000.00	25,000.00	52,720.00
Unappropriated surplus:	Capital stock subscribed	5,520.00	5,520.00	4,601.50	132,300.00	132,300.00	132,300.00	25,000.00	25,000.00	53,720.00
	Total capital stock	270,920.00	270,920.00	250,641.50						
Unappropriated surplus:	Unearned surplus and pre-mission stock	10,000.00	10,000.00	10,000.00						
	Earned surplus	1,346,215.80	1,253,849.08	825,131.95	379,331.14	391,218.36	283,060.32	116.14	(26,908.37)	5,667.20
Total unappropriated surplus	Total capital and surplus	1,627,135.80	1,514,766.06	1,402,562.39	511,631.14	561,218.36	265,060.32	116.14	(26,908.37)	5,667.20
	Total liabilities and capital	2,309,108.22	2,122,324.48	1,954,273.49	900,694.63	972,571.85	898,494.33	425,317.27	494,702.51	297,703.24

199	Liabilities and capital	Southeastern Motor Lines, Inc.				Arrow Carrier Corp.				Total carrier companies			
		4/30/41		12/31/39		4/30/41		12/31/40		4/30/41		12/31/40	
		Adjusted	Per books	Per books	Per books	Adjusted	Per books	Per books	Per books	Adjusted	Per books	Per books	Per books
Current liabilities:													
Accounts payable		\$22,818.17	\$23,304.83	\$20,497.02	\$64,373.28	\$64,373.28	\$62,191.35	\$63,072.95	\$1,156,017.80	\$1,020,778.53	\$1,173,100.40	\$664,670.23	
Notes payable		25,000.00	24,000.00	4,300.00	5,000.00	5,000.00	5,000.00	13,000.00	269,890.44	269,890.44	240,686.25	312,805.61	
Wages payable		326.62	3,540.36	3,540.36	31,714.46	31,714.46	14,093.27	23,772.40	207,401.40	207,401.40	177,075.90	549,479.59	
C. O. D.'s unremitted		752.54	589.52	306.46	12,879.92	12,879.92	12,879.92	9,922.02	23,834.53	27,430.47	9,922.02	24,924.02	
Taxes accrued		14,829.56	10,137.51	11,142.69	42,531.77	23,862.63	33,397.25	46,960.24	602,220.30	610,942.10	46,775.64	358,306.96	
Other current liab.					12,363.00	1,604.99		4,994.02	141,255.23	125,467.79	90,604.95	85,241.08	
Total current liabilities		63,726.89	58,164.88	42,394.55	171,859.43	139,375.28	146,281.87	183,730.63	2,361,109.80	2,258,566.32	1,82,337.66	1,713,427.69	
Equipment & other long term oblig.													
Equipment oblig.		300.00	300.00	1,805.00	24,797.71	24,797.71	43,047.27	103,060.76	1,012,479.17	1,023,124.66	500,480.93	753,158.86	
Other long term oblig.					12,000.00	12,000.00	12,000.00	12,500.00	124,369.75	114,790.75	84,533.21	59,867.73	
Total equip. & other long term obligations		300.00	300.00	1,805.00	36,797.71	36,797.71	55,047.27	115,560.76	1,136,869.92	1,137,915.41	585,014.14	812,966.59	
Advances from affiliated Co's. & others									345,523.47	349,482.89	331,173.24	199,607.13	
Reserve for injury, loss & damage									65,563.60	85,642.77	91,132.47	76,878.05	
Deferred income (5-1-17-41)									47,735.27				
Capital stock:													
Preferred cap. stk.													
Common capital stk.		50,000.00	50,000.00	50,000.00	138,000.00	138,000.00	138,000.00	138,000.00	223,620.00	223,620.00	214,620.00	214,280.00	
Cap. stk. subscribed					98,825.00	98,825.00	98,825.00	98,825.00	653,750.00	653,750.00	653,750.00	652,480.00	
Total capital stk.		50,000.00	50,000.00	50,000.00	236,825.00	236,825.00	236,825.00	236,825.00	877,370.00	877,370.00	868,370.00	866,760.00	
Unappropriated surplus:													
Unappropriated surplus & pre-mings on stock		51,558.90	56,975.56	30,684.71	667,876.79	667,876.79	673,841.00	667,876.79	4,292,836.62	3,277,567.44	2,504,822.36	1,801,351.14	
Farred surplus													
Total unapp. surplus		51,558.90	56,975.56	30,684.71	667,876.79	667,876.79	673,841.00	667,876.79	4,292,836.62	3,277,567.44	2,504,822.36	1,801,351.14	
Total cap. & surplus		101,558.90	106,975.56	80,684.71	904,701.79	910,666.00	898,585.28	775,211.62	1,027,109.33	1,011,436.18	824,313.10	658,795.68	
Total liabilities & capital		165,985.79	165,470.46	124,884.25	100,542.58	1,113,536.93	1,086,839.05	1,040,914.42	1,058,543.01	1,058,543.01	1,040,930.61	1,058,543.01	



**Comparative Balance Sheet of the Non-Carrier Companies Included in the I. C. C. Application as of April 30, 1941, December 31, 1940 & December 31, 1939**

Assets	Southern New England Terminals, Inc.				Brown Equipment & Mfg. Co., Inc.				Conger Realty Co., Inc.				Barnwell Warehouse & Brokerage Co.				Total Noncarrier Companies			
	4/30/41	4/30/41	12/31/40	12/31/39	April 30, 1941		12/31/40	12/31/39	April 30, 1941		12/31/40	12/31/39	4/30/41	4/30/41	12/31/40	12/31/39	4/30/41	4/30/41	12/31/40	12/31/39
	per books	adjusted	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	adjusted	per books	per books	per books	adjusted	per books	per books	per books
<b>Current assets:</b>																				
Cash	\$1,175.56	\$1,175.56	\$23,740.56	\$1,158.48	\$5,353.27	\$5,389.14	\$341.14	\$10,572.03	\$1,968.41	\$1,968.41	\$641.80	\$5,153.95	\$323.70	\$426.70	\$73.66	\$376.71	\$8,820.94	\$8,856.81	\$24,797.16	\$17.2
Accounts receivable	284.00	284.00	284.00	11,094.41	3,157.50	3,692.20			3,597.61		1,600.00	600.00	140.00	140.00	9,041.36	4,790.13	7,179.11	4,116.20	10,925.36	16.4
Notes receivable	350.00	350.00	350.00														350.00	350.00	350.00	
Materials and supplies					206,592.95	152,685.05	116,008.24	86,587.05									206,592.95	152,685.05	116,008.24	86.5
<b>Total current assets</b>	<b>1,809.56</b>	<b>1,809.56</b>	<b>24,374.56</b>	<b>12,252.89</b>	<b>215,103.72</b>	<b>161,766.39</b>	<b>116,349.38</b>	<b>97,159.08</b>	<b>5,566.02</b>	<b>1,968.41</b>	<b>2,241.80</b>	<b>5,753.95</b>	<b>463.70</b>	<b>463.70</b>	<b>9,115.02</b>	<b>5,166.84</b>	<b>222,943.00</b>	<b>166,008.06</b>	<b>152,080.76</b>	<b>121.3</b>
<b>Tangible property:</b>																				
Carrier operating property	218,943.18	218,943.18	176,435.67	108,281.99					432,932.44	419,056.05	420,478.44	350,619.39	26,819.62	26,819.62	26,705.50	23,323.42	678,695.24	678,695.24	623,683.61	482.2
Less: Reserve for depreciation and amortization	18,145.53	15,984.40	17,649.58	14,105.63					13,115.71		11,700.91	8,388.96	7,720.10	7,720.10	7,418.06	6,940.26	36,820.21	38,742.02	36,768.55	29.4
<b>Net carrier operating property</b>	<b>200,797.65</b>	<b>202,958.78</b>	<b>158,786.09</b>	<b>94,176.36</b>					<b>419,816.73</b>	<b>419,056.05</b>	<b>408,777.53</b>	<b>342,230.43</b>	<b>19,099.52</b>	<b>19,099.52</b>	<b>19,351.44</b>	<b>16,383.16</b>	<b>641,875.03</b>	<b>638,953.22</b>	<b>586,915.06</b>	<b>452.8</b>
Noncarrier operating property					56,957.20	48,233.11	45,778.62	36,132.20												
Less: Reserve for depreciation and amortization					13,283.49	9,691.69	7,611.28	2,029.10									56,957.20	48,233.11	45,778.62	36.13
<b>Net noncarrier operating property</b>					<b>43,673.71</b>	<b>38,541.42</b>	<b>38,167.34</b>	<b>34,103.10</b>									<b>43,673.71</b>	<b>38,541.42</b>	<b>38,167.34</b>	<b>34.1</b>
<b>Total tangible property</b>	<b>200,797.65</b>	<b>202,958.78</b>	<b>158,786.09</b>	<b>94,176.36</b>	<b>43,673.71</b>	<b>38,541.42</b>	<b>38,167.34</b>	<b>34,103.10</b>	<b>419,816.73</b>	<b>419,056.05</b>	<b>408,777.53</b>	<b>342,230.43</b>	<b>19,099.52</b>	<b>19,099.52</b>	<b>19,351.44</b>	<b>16,383.16</b>	<b>685,548.74</b>	<b>677,494.64</b>	<b>625,082.40</b>	<b>486.9</b>
Investments and advances to affiliated companies	310.82		310.82	310.82	182,437.71	183,930.17	199,985.38	86,476.39	900.00	900.00	1,800.00	900.00	49,464.86	49,464.86	40,300.00	40,300.00	232,802.57	234,295.03	242,685.38	127.6
Intangible property	800.83	714.74	828.62	422.11	1,874.71	7,356.56	1,773.26	1,214.69	6,577.86	6,361.13	1,144.94	1,907.39	1,633.15	1,633.15	1,783.39	889.80	10,800.46	16,211.67	5,532.21	4.4
Prepayments and other deferred debits																				
<b>Total assets</b>	<b>263,778.86</b>	<b>265,483.08</b>	<b>184,300.09</b>	<b>107,162.18</b>	<b>443,089.85</b>	<b>391,698.04</b>	<b>356,380.86</b>	<b>219,056.76</b>	<b>432,860.61</b>	<b>428,285.59</b>	<b>413,664.27</b>	<b>350,852.77</b>	<b>70,661.23</b>	<b>70,661.23</b>	<b>70,549.85</b>	<b>62,739.80</b>	<b>1,152,094.77</b>	<b>1,094,423.72</b>	<b>1,025,195.07</b>	<b>739.8</b>

Note: The book figures are stated as reflected in the books of the respective companies. The adjusted figures are subject to further audit and revision.

		Southern New England Terminals, Inc.				Brown Equipment & Mfg. Co., Inc.				Conger Realty Co., Inc.				Barnwell Warehouse & Brokerage Co.				Total noncarrier companies			
201	Liabilities and capital	4/30/41	4/30/41	12/31/40	12/31/39	April 30, 1941		12/31/40	12/31/39	April 30, 1941		12/31/40	12/31/39	4/30/41	4/30/41	12/31/40	12/31/39	4/30/41	4/30/41	12/30/40	12/31/39
		per books	Adjusted	per books	per books	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books	Adjusted	per books	per books	per books
	Current liabilities:																				
	Notes payable					\$27,500.00	\$27,500.00	\$30,000.00										\$27,500.00	\$27,500.00	\$30,000.00	\$0
	Accounts payable			\$2,672.39	\$18,375.89	93,119.92	55,403.00	56,982.90	\$81,022.67	\$456.10	\$456.10	\$5,066.60	\$61,868.04	\$0.84	\$0.84	\$107.25	\$448.80	\$27,500.00	\$27,500.00	\$30,000.00	\$0
	Wages payable					1,947.21		1,133.95	1,213.80							57.88	93,576.86	55,859.94	64,829.14	161.32	
	Taxes accrued	\$2,572.99	\$1,139.89	492.86		52,241.95	51,060.20	53,879.66	1,345.67	38,312.62	37,234.66	24,157.85	1,291.50	2,532.21	2,532.21	3,767.07	1,291.50	1,047.21	1,143.95	2.50	
	Other current liabilities	732.31	363.67	3,229.41	139.64	139.02		264.25	85.40	826.00		300.00		178.75	178.75	5.00	646.01	94,226.67	93,400.06	82,297.44	1.89
	Total current liabilities	3,305.30	1,503.56	6,394.36	18,515.53	174,048.10	158,963.20	142,270.76	83,667.54	39,594.72	37,690.76	29,524.45	61,898.04	2,711.80	2,711.80	3,879.32	2,456.69	217,858.18	177,671.06	182,068.89	165.50
	Other long-term obligations	99,033.28	99,033.28	102,499.96	49,250.00					165,000.00	165,000.00	180,000.00	240,000.00	10,500.00	10,500.00	11,000.00	13,000.00	274,533.28	274,533.28	293,499.96	302.20
	Advances from affiliated companies	73,009.16	73,369.16	51,183.12	18,000.00		900.00			97,706.88	94,329.28	97,706.88						171,076.04	168,238.44	148,890.00	18.00
	Capital stock:																				
	Preferred stock	20,000.00	20,000.00	20,000.00	20,000.00	100,000.00	100,000.00	100,000.00	20,600.00	100,000.00	100,000.00	100,000.00	300.00	22,800.00	22,800.00	22,800.00	22,800.00	22,800.00	22,800.00	22,800.00	22.80
	Common stock	8,431.12	11,577.08	4,222.65	1,336.65	169,041.75	156,834.84	114,110.10	114,789.22	30,559.01	31,265.55	6,732.94	48,684.71	32,649.43	32,649.43	30,870.53	2,000.00	222,000.00	222,000.00	222,000.00	42.90
	Earned surplus																	243,827.27	229,180.94	155,930.22	787.30
	Total capital stock and surplus	28,431.12	31,577.08	24,222.65	21,336.65	269,041.75	256,834.84	214,110.10	135,389.22	130,559.01	131,265.55	106,732.94	48,984.73	57,449.43	57,449.43	55,670.53	47,283.11	488,627.27	473,980.94	400,736.22	253.00
	Total liabilities and capital	263,778.86	265,483.08	184,300.09	107,162.18	443,089.85	391,698.04	356,380.86	219,056.76	432,860.61	428,285.59	413,664.27	350,852.77	70,661.23	70,661.23	70,549.85	62,739.80	1,152,094.77	1,094,423.72	1,025,195.07	739.80

NOTE: The book figures are stated as reflected in the books of the respective companies. The adjusted figures are subject to further audit and revision.

202 Summary of the comparative balance sheet of the carrier and noncarrier companies included in I.C.C. application as of April 30, 1941, December 31, 1940, and December 31, 1939

	Carrier companies				Noncarrier companies				Total all companies			
	April 30, 1941		12/31/40		April 30, 1941		12/31/40		April 30, 1941		12/31/40	
	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
<b>ASSETS</b>												
<b>Current assets:</b>												
Cash	\$510,497.82	\$495,917.14	\$503,510.94	\$468,231.51	\$5,820.94	\$5,856.81	\$24,797.16	\$17,291.17	\$519,318.76	\$501,773.95	\$388,347.10	\$445,492.64
Working funds	70,374.38	77,458.23	71,993.78	64,530.22					70,374.38	77,458.23	71,993.78	64,530.22
Special deposits	19,472.26	35,865.28	34,833.45	21,712.51					19,472.26	35,865.28	34,833.45	21,712.51
Notes receivable	37,257.33	37,258.38	3,897.33	1,802.79	350.00	350.00	330.00		37,257.33	37,608.38	4,247.33	1,802.79
Accounts receivable	1,735,092.70	1,578,675.11	1,319,291.26	1,019,336.14	7,376.11	4,116.20	10,925.36	16,484.54	1,742,271.81	1,582,791.31	1,330,176.62	1,035,820.66
Total notes and accounts receivable	1,772,350.03	1,615,933.49	1,323,188.59	1,021,138.93	7,529.11	4,466.20	11,275.36	16,484.54	1,779,870.14	1,620,399.69	1,334,423.95	1,037,623.47
Less: Reserve for uncollectible assets	42,819.43	79,202.36	96,810.00	64,342.69					42,819.43	79,202.36	96,810.00	64,342.69
Notes and accounts receivable—Net	1,729,530.60	1,536,731.13	1,226,378.59	956,796.24	7,529.11	4,466.20	11,275.36	16,484.54	1,737,050.71	1,541,197.33	1,237,613.95	973,280.78
Materials and supplies	429,385.16	416,622.39	336,923.16	274,635.69	296,592.95	162,685.05	116,008.24	86,587.05	635,978.11	569,307.44	462,931.40	361,272.74
Other current assets	31,822.80	16,395.30	86,501.15	78,520.53					31,822.80	16,395.30	86,501.15	78,520.53
Total current assets	2,791,083.02	2,578,929.47	2,128,199.47	1,864,426.70	222,943.00	166,608.09	152,089.76	120,332.76	3,014,026.02	2,744,937.83	2,290,100.33	1,944,739.40



Summary of the comparative balance sheet of the carrier and noncarrier companies included in I. C. C. application  
as of April 30, 1941, December 31, 1940, and December 31, 1939—Continued

	Carrier companies				Noncarrier companies				Total all companies			
	April 30, 1941		12/31/40		April 30, 1941		12/31/40		April 30, 1941		12/31/40	
	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books	Adjusted	Per books	per books	per books
<b>ASSETS—continued</b>												
Tangible property:												
Carrier operating property	\$8,406,903.28	\$8,333,138.35	\$7,863,739.24	\$6,806,503.81	\$678,693.21	\$678,693.24	\$623,683.61	\$492,224.80	\$6,087,508.52	\$9,011,533.79	\$8,497,422.85	\$7,378,728.61
Less: Reserve for depreciation and amortization	3,722,493.90	3,697,591.50	3,773,931.50	3,490,126.12	36,829.21	36,742.02	36,768.85	26,434.85	3,759,314.11	3,737,333.62	3,819,790.05	3,519,560.97
Net carrier operating property	4,684,409.38	4,635,547.05	4,089,807.74	3,406,377.69	641,873.03	638,953.22	586,915.06	452,789.95	2,328,194.41	5,274,200.27	4,677,632.80	3,859,167.64
Noncarrier operating property	62,221.37	62,221.57	31,389.37	3,472.45	56,957.20	48,233.11	45,378.62	36,132.20	119,178.57	110,454.68	77,167.99	30,604.65
Less: Reserve for depreciation and amortization	2,959.48	2,969.68	2,865.21	2,645.92	13,283.49	9,691.69	7,611.28	2,029.10	16,252.97	12,661.37	10,596.49	4,675.92
Net noncarrier operating property	59,251.89	59,251.89	28,494.16	826.53	43,673.71	38,541.42	38,167.34	34,103.10	102,925.60	97,793.31	66,561.50	34,929.63
Total tangible property	4,743,661.27	4,694,798.94	4,118,301.90	3,409,794.22	685,548.74	677,494.64	623,082.40	486,892.05	2,441,120.01	5,372,238.58	4,743,834.30	3,894,097.27
Intangible property												
Investments and advances to affiliates and others	202,968.69	357,364.77	100,285.19	137,221.58	232,802.57	234,298.03	242,088.38	127,676.39	435,793.36	591,636.80	402,370.57	264,897.95
Prepayments and other deferred debits	874,476.50	656,191.35	506,831.40	474,245.76	10,900.46	16,211.67	5,832.21	4,404.99	855,276.96	672,403.02	512,363.51	478,740.75
Total assets	8,614,211.48	8,413,405.57	7,044,039.61	5,961,674.93	1,152,094.77	1,094,423.72	1,093,077.07	739,811.51	3,766,396.25	6,597,826.29	5,269,225.98	6,701,496.44

LIABILITIES AND CAPITAL												
Current liabilities:												
Accounts payable	1,156,017.80	1,020,778.53	1,173,100.40	986,670.22	93,576.86	55,859.04	64,829.14	161,324.48	1,249,594.00	1,076,038.47	1,257,069.54	1,147,994.76
Notes payable	360,660.44	269,300.44	246,038.25	112,805.61	27,560.00	27,500.00	30,000.00	448,807	268,190.44	206,860.44	276,038.25	143,024.41
Wages payable	207,081.40	205,396.99	177,673.96	150,479.59	1,017.21	1,143.95	1,143.95	2,503.30	208,128.61	205,396.99	178,819.91	12,2,964.89
C. O. D.'s unremitted	23,534.53	27,460.47	9,102.46	19,924.02					23,534.53	27,460.47	9,102.46	19,924.02
Taxes accrued	602,229.30	610,042.10	485,773.64	538,996.96	94,226.67	93,400.00	82,207.44	1,991.68	696,446.97	703,412.16	569,073.08	380,298.64
Other current liabilities	141,263.33	125,607.79	99,604.95	85,241.08	1,807.44	911.06	3,795.36	237.54	142,802.72	126,378.85	94,403.31	85,478.62
Total current liabilities:	2,391,109.80	2,258,506.32	2,182,357.66	1,713,127.48	217,858.18	177,671.06	182,098.80	166,507.80	2,698,967.98	2,436,177.38	2,364,426.55	1,879,935.28
Equipment & other long-term obligations:												
Equipment obligations	1,012,479.17	1,023,124.66	500,480.95	733,158.86	274,533.26	274,533.28	268,090.96	302,259.00	1,012,479.17	1,023,124.66	500,480.95	733,158.86
Other long term obligations	124,390.75	114,700.75	84,553.21	50,807.73	274,533.26	274,533.28	268,090.96	302,259.00	396,924.03	386,354.03	378,083.17	362,057.73
Total equipment & other long term obligations	1,136,869.92	1,137,825.41	585,034.14	812,966.59	274,533.28	274,533.28	268,090.96	302,259.00	1,409,403.20	1,412,448.69	878,564.10	1,115,216.59
Advances from affiliated companies and others	345,823.47	349,482.89	351,173.24	169,607.13	171,076.04	168,234.44	148,890.00	18,600.00	516,899.57	517,721.33	509,065.24	217,967.13
Reserves for injuries, loss & damage	65,563.69	55,642.77	91,152.47	76,878.05					65,563.69	55,642.77	91,152.47	76,878.05
Deferred income (May 1-17, 1941)	47,748.27								47,748.27			
Capital stock:												
Preferred capital stock	223,620.90	223,620.90	218,620.90	214,280.00	22,800.00	22,800.00	22,800.00	22,800.00	246,420.00	246,420.00	241,420.00	237,060.00
Common capital stock	634,750.00	633,750.00	633,750.00	632,400.00	222,000.00	222,000.00	225,000.00	42,900.00	855,750.00	855,750.00	855,750.00	675,380.00
Capital stock subscribed	5,225.00	5,320.00	5,740.00	4,601.50					5,520.00	5,520.00	5,520.00	4,901.50
Total capital stock	963,600.00	962,690.90	858,110.90	851,361.50	244,800.00	244,800.00	244,800.00	65,700.00	1,107,690.00	1,167,690.00	1,102,910.00	917,061.50
Unappropriated surplus:												
Unearned surplus & premiums on stock	471,380.74	471,380.74	471,380.74	506,783.04					471,380.74	471,380.74	471,380.74	506,783.04
Earned surplus	3,292,838.59	3,277,587.44	2,504,822.36	1,806,651.14	343,827.27	228,180.94	155,936.22	187,353.71	3,539,665.60	3,500,798.38	2,660,738.58	1,988,064.85
Total unappropriated surplus	3,764,219.33	3,748,968.18	2,976,203.10	2,307,434.18	343,827.27	228,180.94	155,936.22	187,353.71	4,019,046.60	3,978,140.12	3,132,139.32	2,494,787.89
Total capital and surplus	4,627,109.33	4,911,858.18	3,834,313.10	3,158,795.68	688,627.27	473,980.94	400,736.22	255,033.71	5,115,736.60	5,053,839.12	4,233,049.32	3,411,849.39
Total liabilities and capital	8,614,211.45	8,413,405.57	7,044,030.81	5,961,674.93	1,152,094.77	1,064,423.78	1,023,195.07	739,811.51	9,766,306.25	9,507,290.80	8,069,225.68	6,701,456.44

NOTE.—The adjusted figures are subject to further audit and revision.

## ASSOCIATED TRANSPORT, INC.

Schedule of Depreciation Rates on Revenue Equipment Employed by the Companies Included in the I. C. C. Application for the Years 1937, 1938, 1939, 1940, and as Provided in the Contracts of the Respective Companies

	Motor-carrier companies							Non-carrier companies		
	Consolidated Motor Lines, Inc.	McCarthy Freight System, Inc.	McMoran Transportation Lines, Inc.	Horton Motor Lines, Inc.	Barnwell Brothers	Transportation, Inc.	Southeastern Motor Lines, Inc.	Arrow Carrier Corp.	Brown Equipment & Mfg. Co., Inc.	Barnwell Warehouse & Brokerage Co.
Trucks:										
1937	33 1/2%	25-33 1/2%	25-33 1/2%	32-38 7/8%	33 1/2%	25-33 1/2%		12 1/2%	33 1/2%	33 1/2%
1938	30-35%	25-33 1/2%	25-33 1/2%	33-39%	33 1/2%	25-33 1/2%	25%	12 1/2%	33 1/2%	33 1/2%
1939	25%	25-33 1/2%	25-33 1/2%	33-39%	25-33 1/2%	25-33 1/2%	25%	12 1/2%	33 1/2%	33 1/2%
1940	25%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25%	12 1/2%	33 1/2%	33 1/2%
Per contract	25%	20-25%	25%	25%	4 1/2%	20-25%	25%	12 1/2%	25%	25%
Trailers:										
1937	25%	20-25%	40%	31-40%	33 1/2%	33 1/2%		12 1/2%	None	33 1/2%
1938	25%	20-25%	25-40%	30-42%	25-33 1/2%	33 1/2%	25%	12 1/2%	None	25-33 1/2%
1939	20-25%	20%	25-35%	30-37%	25-33 1/2%	33 1/2%	25%	12 1/2%	None	25-33 1/2%
1940	20-25%	20%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25-33 1/2%	25%	12 1/2%	None	25-33 1/2%
Per contract	20-25%	20-25%	20-25%	20-25%	20-25%	20-25%	20-25%	10%	None	20-25%
Trailers:										
1937	16 2/3%	25%	20-7 1/2%	15-24%	25%	35-16 2/3%		10%	None	25%
1938	16 2/3%	12 1/2%	16 2/3%	16-24%	25%	35-16 2/3%	20%	10%	None	20%
1939	14 2/3%	12 1/2%	16 2/3%	17-24%	25%	35-16 2/3%	20%	10%	None	20%
1940	14 2/3%	12 1/2%	16 2/3%	11-24%	14 2/3%	35-16 2/3%	20%	10%	None	14 2/3%
Per contract	14 2/3%	14 2/3%	14 2/3%	10%	14 2/3%	14 2/3%	14 2/3%	10%	None	14 2/3%

NOTE.—Wherever more than one percentage appears, the smaller percentage applies to heavy equipment.

## EXHIBIT B-6

ASSOCIATED TRANSPORT, INC.

Comparative statement of income, profit and loss of the carrier companies indicated in the I. C. C. application for the calendar years 1939, 1940 and four months ended April

	Consolidated Motor Lines, Inc.			McCarthy Freight System, Inc.			M. Moran Transportation Lines, Inc.			Acct. No.	Horion Motor Lines, Inc.			Barwell Brothers, Inc.			Transportation	
	5 periods 5/17	8 periods 12/31	12 months 1/1 to 12/31	4 periods 4/19	9 periods 12/31	12 months 1/1 to 12/31	4 months 4/25	8 months 12/27	12 months 12/27		4 months 4/1/39	8 months 12/31	12 months 1/1 to 12/31	4 months to 4/30	8 months to 12/31	12 months 1/1 to 12/31	4 months to 4/30	8 months to 12/31
Operating revenue:																		
1941	\$2,075,870.82	\$3,677,000.00	\$5,752,870.82	\$892,772.53	\$1,780,218.00	\$2,472,990.53	\$1,040,084.41	\$2,072,324.00	\$3,712,864.41	3000	\$1,750,490.52	\$1,908,379.82	\$3,755,076.37	\$872,836.20	\$1,750,000.00	\$2,882,836.20	\$501,535.63	\$1,215,287.21
1940	1,578,776.52	2,986,762.84	4,565,539.36	532,215.15	1,369,398.89	1,901,634.04	836,351.66	1,978,528.01	2,811,809.67		1,284,152.38	2,459,541.31	1,250,093.69	641,454.07	1,425,216.64	2,039,670.71	370,045.47	837,640.31
1939			4,511,455.85			1,682,304.81			2,535,316.42				3,825,665.46		1,879,089.51			
1941 over 1940	497,094.30	690,237.16	1,187,331.46	100,557.38	410,819.11	571,356.49	203,732.75	603,995.99	901,054.74		466,338.14	1,458,838.51	1,504,982.68	191,382.13	324,783.36	843,165.49	131,490.16	377,646.90
1941 over 1939			1,241,414.97			790,685.72			1,177,267.96				1,949,412.95		705,745.60			
Equip. main. & gar. ex.:										1000								
1941	190,195.30	344,800.00	534,995.30	66,019.70	169,476.00	235,495.70	136,500.49	286,863.89	433,863.40		195,519.56	334,300.76	629,839.32	71,673.45	460,166.00	233,673.59	67,382.54	133,417.95
1940	161,315.96	286,886.04	448,202.00	60,155.38	132,562.79	192,718.37	104,850.58	216,613.10	351,465.08		170,120.31	377,635.44	547,775.75	65,811.76	337,173.70	263,673.59	20,819.87	109,185.03
1939			424,671.23			193,321.53			319,929.64				458,887.31			215,609.02		
1941 over 1940	28,879.34	57,913.96	86,793.30	5,864.32	36,913.21	42,777.33	31,649.91	50,249.79	81,898.32		25,399.25	56,665.32	82,063.57	5,861.69	22,992.30	69,820.00	16,562.67	26,232.92
1941 over 1939			110,324.07			42,174.17			131,943.11				170,968.01		18,994.31			
Transportation ex.:										4200								
1941	355,597.39	649,500.00	1,035,067.39	193,292.71	498,461.00	691,753.71	2,345,254.70	1,024,111.00	1,410,365.70		310,900.21	600,978.32	1,398,378.73	242,933.63	485,944.00	717,065.83	107,317.14	275,129.75
1940	290,059.31	502,525.16	792,584.47	159,408.18	383,281.67	542,691.85	349,872.50	757,904.18	1,107,861.78		211,401.71	506,459.05	781,590.76	183,035.64	383,288.00	598,173.30	84,410.43	196,300.81
1939			1,021,184.76			465,858.70			993,258.33				964,751.98			133,412.28		
1941 over 1940	65,538.08	146,974.84	212,512.92	33,884.53	115,179.33	49,061.86	45,382.20	266,116.82	311,499.02		71,158.80	154,519.27	228,677.97	47,022.99	102,656.36	118,936.53	22,906.71	78,828.94
1941 over 1939			(16,087.37)			225,895.92			425,107.17				314,412.75		282,656.36			
Terminal expense:										4400								
1941	772,000.22	1,373,000.00	2,145,069.22	165,459.06	409,430.00	574,909.06	201,158.42	521,142.00	722,300.42		372,072.61	839,262.71	1,191,575.32	148,401.87	312,000.00	499,401.87	139,678.23	341,661.89
1940	627,359.52	1,172,867.00	1,800,226.52	122,537.77	307,193.83	429,733.60	130,696.22	373,387.54	524,166.76		285,083.83	627,867.71	933,221.00	158,192.15	329,581.08	508,173.63	102,081.91	230,082.06
1939			1,663,381.64			387,388.13			497,792.70				719,180.62			374,265.21		
1941 over 1940	144,739.70	200,133.00	344,842.70	42,922.19	102,236.17	145,175.46	70,462.20	147,754.46	198,133.66		86,988.78	191,395.01	258,354.32	33,209.72	82,418.92	91,228.24	37,596.32	111,579.83
1941 over 1939			481,717.58			187,521.83			204,567.72				133,094.71		86,139.66			
Sales & adver. ex.:										4100								
1941	48,781.15	91,100.00	139,881.15	21,596.25	55,542.00	77,138.25	24,858.03	61,140.00	88,998.05		71,188.50	133,280.37	209,438.05	40,798.80	83,093.00	125,798.80	20,594.16	47,659.68
1940	45,860.74	81,946.35	127,807.09	20,848.97	48,630.62	69,479.59	17,353.66	45,537.38	62,891.94		67,373.67	130,149.12	205,913.79	34,172.62	81,439.59	119,582.41	24,229.35	43,287.91
1939			119,700.95			68,244.11			51,789.95				119,533.63			77,988.63		
1941 over 1940	2,920.41	9,153.65	12,074.06	747.28	6,911.38	7,658.66	7,504.37	15,602.62	26,106.11		4,814.83	10,131.25	103,524.26	6,626.18	2,653.41	106,216.39	6,364.81	4,371.77
1941 over 1939			20,180.20			8,894.14			37,208.10				80,995.37		179.91	4,105.39	13,629.19	4,371.77
Ins. & safety ex.:										4300								
1941	97,342.26	175,306.00	272,642.26	25,924.24	66,580.00	92,504.24	72,539.04	164,000.00	236,539.04		77,099.95	167,431.55	245,131.48	17,021.59	101,590.00	148,327.75	32,571.11	82,091.71
1940	89,289.36	156,851.91	246,141.27	23,863.58	49,463.96	73,327.54	62,591.69	130,426.83	192,818.52		61,888.69	139,826.21	204,717.84	30,186.70	101,123.10	139,609.91	26,882.45	56,569.24
1939			282,721.73			78,161.36			185,479.36				232,687.00			105,587.28		
1941 over 1940	8,052.90	18,454.09	26,500.99	2,060.66	17,116.04	19,176.70	10,947.35	33,573.17	43,720.52		15,211.26	27,605.34	40,413.64	6,834.89	30,466.90	9,717.84	5,688.66	25,522.47
1941 over 1939			(10,079.47)			14,342.88			61,059.68				12,459.48		12,971.33			
Admin. & gen. ex.:										4600								
1941	124,656.37	220,500.00	345,156.37	54,445.41	140,637.00	195,082.41	62,433.90	135,625.00	197,058.90		103,088.51	387,897.71	557,586.25	69,082.14	140,900.00	269,082.14	27,792.88	64,608.05
1940	115,274.51	231,428.05	346,702.56	42,810.95	132,193.25	175,004.20	50,674.65	120,747.93	171,422.58		146,497.42	334,857.39	481,382.81	85,143.35	190,169.61	275,312.96	28,999.63	48,654.11
1939			295,607.26			141,766.95			158,936.55				388,663.99			237,927.19		
1941 over 1940	9,381.86	(10,928.05)	(1,546.19)	11,634.46	8,443.75	20,078.21	11,759.25	14,877.07	25,636.32		29,100.09	53,040.32	76,203.44	16,738.79	50,730.39	93,769.18	1,793.23	16,011.91
1941 over 1939			49,549.11			53,315.46			38,722.35				169,122.26		50,169.61	166,260.82	1,693.45	16,011.91
Depreciation expense:										5000								
1941	55,189.32	138,600.00	193,789.32	22,405.48	106,813.00	129,218.48	49,105.36	111,000.00	160,105.36		82,846.08	174,390.84	257,200.92	55,354.13	70,000.00	105,354.13	24,762.88	54,449.98
1940	78,773.93	118,5,																



**ASSOCIATED TRANSPORT, INC.**

ties indicated in the I. C. C. application for the calendar years 1939, 1940 and four months ended April 30, 1941, per books and estimated for the eight months, May 1, to December 31, 1941

M. Morse Transportation Lines, Inc.			Acct. No.	Horton Motor Lines, Inc.			Barnwell Brothers, Inc.			Transportation, Inc.			Southeastern Motor Lines, Inc.			Arrow Carrier Corporation			Grand total			
4 months 4/25	8 months 12/27	12 months 12/27		4 months to 1/30	8 months to 12/31	12 months to 12/31	4 months to 1/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	
1,040,080.41	\$2,672,524.00	\$3,712,664.41	3000	\$1,756,691.52	\$4,008,379.87	\$5,775,076.35	\$832,836.20	\$1,675,000.00	\$2,582,826.20	\$501,535.93	\$1,215,285.23	\$1,716,820.86	\$181,153.07	\$302,306.11	\$543,459.21	\$566,043.63	\$1,452,933.63	\$1,758,976.66	\$7,656,988.81	\$16,618,646.23	\$24,275,635.04	
836,431.66	1,978,528.01	2,814,859.67		1,309,151.38	2,949,941.31	4,250,093.69	641,454.47	1,425,216.64	2,009,670.71	370,045.47	837,946.33	1,207,691.78	133,441.02	267,242.04	430,774.63	475,107.87	992,893.26	1,468,001.16	5,967,544.14	12,837,750.27	18,796,548.72	
		2,535,396.42				3,820,663.40			1,879,088.51			4,083,736.80			368,504.44			3,510,477.48				
203,748.75	693,995.99	897,744.74	4100	466,544.14	1,038,438.62	1,524,982.65	191,382.13	324,782.33	449,165.49	131,490.16	377,638.92	599,129.08	47,712.05	64,973.13	112,685.18	90,935.76	160,039.77	230,978.53	1,789,444.67	3,780,925.96	5,570,370.61	
		1,177,287.98				1,949,412.95			703,746.69			633,084.06			174,954.77			208,409.18			6,879,086.31	
126,500.49	298,863.00	433,363.49		195,549.56	434,303.76	629,833.32	73,673.35	166,000.00	231,673.35	67,582.54	135,417.95	203,009.49	24,857.24	49,714.48	74,571.72	59,178.22	125,787.33	184,965.55	813,556.40	1,716,362.52	2,529,918.92	
104,850.58	216,613.10	351,463.68		129,120.31	377,655.44	547,774.75	65,811.76	137,575.70	203,387.46	50,819.87	109,185.00	190,004.87	15,097.67	27,717.91	42,796.58	51,779.52	110,059.79	161,839.31	679,931.25	2,108,187.62	2,108,187.62	
		319,929.64			458,885.31			215,609.02			140,465.53			53,088.99			171,097.77			1,976,969.42		
31,540.91	50,249.90	81,899.81	4200	25,429.25	36,648.32	82,077.57	7,861.39	22,324.30	30,285.59	16,762.97	26,232.15	42,995.62	9,779.57	21,996.57	31,776.14	7,398.70	15,727.54	24,126.24	133,625.15	288,106.75	421,731.90	
		115,443.41				170,968.01			18,094.33			62,594.96			21,182.73			13,867.78			352,919.50	
395,254.70	1,024,111.00	1,419,365.70		316,540.21	691,978.52	1,008,378.74	232,033.63	483,000.00	717,063.63	197,345.14	275,125.75	382,771.89	45,681.23	91,362.46	137,043.65	74,129.10	143,565.94	217,435.04	1,719,566.11	3,839,345.67	5,579,311.78	
349,872.50	737,994.18	1,107,866.28		211,111.71	590,459.05	780,900.79	185,035.64	383,288.61	568,825.30	84,379.44	186,509.83	270,890.27	37,785.38	88,909.18	129,691.56	68,904.12	133,594.63	202,298.75	1,439,877.28	2,972,361.36	4,415,010.40	
		953,258.53			694,171.98			435,442.28			234,099.15			120,873.51			195,116.10			4,158,010.40		
45,882.20	266,116.82	511,499.02	4300	71,168.50	155,519.47	226,677.97	47,029.99	101,711.34	148,741.33	22,974.70	88,916.92	111,891.62	7,895.85	2,456.28	10,352.13	5,224.98	10,111.31	15,336.29	266,088.83	886,984.31	1,186,073.11	
		425,107.17				314,442.75			283,583.45			148,672.74			16,168.18			22,518.94			1,421,301.38	
201,158.45	521,442.00	722,300.42		372,372.61	819,202.71	1,191,575.92	148,404.87	312,000.00	400,401.87	131,678.23	341,661.89	473,340.12	22,672.74	45,343.48	68,615.22	184,139.67	388,864.71	575,004.38	1,997,984.72	4,210,664.79	6,208,649.51	
150,606.22	373,587.54	524,193.76		285,383.83	627,837.77	913,221.60	135,392.45	229,684.08	368,173.53	102,681.91	230,082.06	372,763.97	16,590.55	39,233.32	55,823.87	163,482.58	327,472.22	490,954.80	1,697,134.83	3,307,956.82	4,945,091.66	
		427,702.70			738,180.62			374,263.21			299,202.01			36,622.48			153,542.41			4,342,675.20		
30,536.20	147,554.46	298,106.66	4400	50,988.78	191,364.94	278,553.72	9,912.42	82,318.92	92,231.34	28,995.32	111,579.85	110,576.15	6,081.19	6,110.16	12,191.35	20,657.09	61,392.49	82,049.58	390,849.89	902,707.97	1,293,557.89	
		294,507.72				453,694.70			86,139.66			304,138.11			31,892.74			127,461.97			1,865,974.31	
24,858.05	64,140.00	88,998.05		77,188.59	135,280.37	210,468.95	40,748.80	85,993.00	125,798.80	20,594.16	47,650.68	68,253.84	6,240.95	12,481.90	18,722.85	13,569.38	26,476.99	39,836.37	251,417.33	537,680.94	789,098.27	
17,353.66	45,537.38	62,891.04		67,373.67	139,130.12	204,513.79	31,552.62	84,829.29	119,582.41	24,223.55	43,287.91	67,511.26	5,807.07	14,376.14	20,183.21	13,871.00	27,491.42	41,362.42	229,891.48	485,239.33	715,130.81	
		51,793.97			149,333.63			57,968.63			74,139.56			13,598.46			16,043.81			601,383.10		
7,504.39	18,602.62	26,107.01	4500	7,814.92	16,110.25	23,953.57	6,247.78	179.61	4,416.39	3,629.19	1,371.77	742.58	433.86	1,894.24	1,460.36	511.62	1,011.43	1,526.05	21,525.85	52,441.61	73,967.46	
		37,204.10				80,935.53			17,800.17			5,885.72			4,854.39			6,207.41			187,715.17	
72,539.04	164,000.00	236,539.04		77,099.95	167,431.53	245,631.48	47,021.59	161,500.00	148,521.59	32,574.14	82,591.71	115,565.85	6,742.55	11,485.10	30,227.65	23,999.31	46,559.20	70,558.51	383,833.08	817,847.54	1,201,680.62	
62,391.60	130,426.83	192,818.32		64,888.60	139,826.24	204,717.84	36,783.70	64,123.10	107,669.90	26,882.35	56,569.34	84,451.69	5,881.03	13,375.42	20,256.45	24,475.65	45,445.39	69,921.04	334,458.96	656,085.19	960,544.15	
		185,479.36			232,681.69			105,587.29			71,784.93			18,357.08			66,170.43			1,040,943.16		
10,147.35	33,573.17	43,720.52	4600	12,811.35	27,002.29	40,413.64	19,234.89	37,376.90	47,611.79	5,691.79	26,422.37	32,114.16	861.52	109.58	971.20	470.34	1,113.81	637.47	19,384.12	161,762.35	211,146.47	
		51,059.68				12,450.48			37,974.33			43,780.92			1,870.57			4,388.08			160,747.47	
62,033.90	135,625.00	197,658.90		169,688.51	387,897.74	577,586.25	69,082.14	140,000.00	209,082.14	27,792.88	64,668.05	92,460.93	21,725.64	43,451.28	65,176.92	56,301.01	111,764.42	168,065.43	585,725.86	1,244,543.49	1,830,299.35	
50,674.65	120,747.93	171,422.58		146,497.42	354,885.39	481,382.81	85,143.35	180,539.61	275,312.96	26,699.63	48,654.14	74,755.77	12,937.44	47,513.89	60,251.33	55,065.91	109,399.23	164,665.14	534,533.86	1,214,761.49	1,830,299.35	
		158,936.55			388,463.99			257,927.19			84,181.89			43,295.47			196,329.98			1,516,550.28		
11,359.25	14,877.07	26,236.32	5000	23,191.09	53,612.33	76,261.44	16,091.21	30,169.01	66,230.82	1,693.25	16,013.91	17,707.16	8,788.20	3,862.61	4,925.59	1,265.19	2,765.19	3,600.29	51,192.00	29,782.00	80,974.00	
		38,722.35				169,122.26			28,845.05			8,479.04			21,881.45			28,305.55			283,719.07	
49,105.36	111,060.00	160,403.36		82,840.08	154,360.84	237,240.92	35,354.13	70,000.00	105,354.13	24,762.88	54,449.98	79,212.86	5,970.52	11,941.64	17,911.56	31,021.55	62,724.10	94,745.65	396,649.32	710,888.96	1,017,538.28	
34,960.20	83,428.52	118,388.72		58,707.07	167,147.64	250,854.71	29,275.14	85,342.46	114,617.60	19,616.83	36,742.65	56,359.48	4,483.26	10,315.52	14,798.78	34,973.61	67,086.25	102,059.86	327,437.20	642,313.93	974,757.13	
		112,761.17			235,067.87			86,861.13			46,620.62			9,134.33			99,973.76			889,908.09		
114,145.16	27,571.48	31,719.61	5100	(8,866.99)	(12,786.80)	(19,653.79)	6,078.99	(13,342.46)	(9,263.47)	5,146.05	17,707.33	22,853.38	1,487.26	1,625.52	3,112.78	(3,952.96)	(3,362.15)	7,314.21	(26,787.88)	63,575.03	42,787.15	
		47,343.89				2,123.05			18,493.60			18,493.60			8,777.23			(5,228.11)			127,630.19	

**Comparative statement of income, profit and loss of the carrier companies indicated in the I. C. C. application for the calendar years 1939, 1940 and four months ended April 30, 1941, per books and estimated for the eight months, May 1, to December 31, 1941—Continued**

209	Southern New England Terminals, Inc.			Brown Equipment & Mfg. Co., Inc.			Conger Realty Co.			Barnwell Warehouse & Brokerage Co.			Totals		
	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31	4 months to 4/30	8 months to 12/31	12 months to 12/31
<b>Sales:</b>															
1941				\$274,310.85	\$639,707.95	\$914,018.80							\$274,310.85	\$639,707.95	\$914,018.80
1940				287,484.94	569,032.11	856,517.03							287,484.94	569,032.11	856,517.03
1939						469,402.42									469,402.42
1941 over 1940				(13,174.09)	70,675.84	57,501.75							(13,174.09)	70,675.84	57,501.75
1941 over 1939						444,616.38									444,616.38
<b>Rental income:</b>															
1941	\$9,133.32	\$21,546.64	\$30,679.96				\$42,200.00	\$90,400.00	\$132,600.00	\$4,431.67	\$9,100.00	\$13,531.67	\$5,764.99	\$121,046.64	\$176,811.63
1940	3,609.99	13,499.97	17,199.96				34,600.00	83,603.22	118,203.22	1,160.00	9,000.00	10,253.00	30,430.99	106,198.19	145,658.18
1939			6,466.66						54,120.00						60,586.66
1941 over 1940	5,433.33	8,046.67	13,480.00				7,600.00	6,796.78	14,396.78	3,271.67	3.00	3,278.67	16,303.00	14,848.45	31,153.45
1941 over 1939			24,213.30						78,480.00			13,531.67			116,224.97
<b>Freight revenue:</b>															
1941										35,428.97	(407.25)	35,321.72	35,428.97	(107.25)	35,321.72
1940												120,554.74			120,554.74
1939															
1941 over 1940										(35,428.97)	107.25	35,321.72	(35,428.97)	107.25	(35,321.72)
1941 over 1939												(35,428.97)			(35,428.97)
<b>Total income:</b>															
1941	9,133.32	21,546.64	30,679.96	274,310.85	639,707.95	914,018.80	42,200.00	90,400.00	132,600.00	4,431.67	9,100.00	13,531.67	330,675.84	760,754.59	1,090,830.43
1940	3,609.99	13,499.97	17,199.96	287,484.94	569,032.11	856,517.03	34,600.00	83,603.22	118,203.22	36,588.97	8,978.75	45,576.72	362,373.90	675,123.05	1,037,496.95
1939			6,466.66			469,402.42			54,120.00			120,554.74			650,543.82
1941 over 1940	5,433.33	8,046.67	13,480.00	(13,174.09)	70,675.84	57,501.75	7,600.00	6,796.78	14,396.78	(32,157.30)	112.25	(32,045.95)	(32,298.06)	85,631.54	53,333.48
1941 over 1939			24,213.30			444,616.38			78,480.00			(107,023.07)			440,286.61
<b>EXPENSES</b>															
<b>Cost of goods sold:</b>															
1941				211,104.67	480,550.00	691,654.67							211,104.67	480,550.00	691,654.67
1940				211,789.40	422,672.48	634,461.88							211,789.40	422,672.48	634,461.88
1939						350,281.75									350,281.75
1941 over 1940				(684.73)	57,877.52	57,192.79							(684.73)	57,877.52	57,192.79
1941 over 1939						341,372.92									341,372.92
<b>210. Transportation, maintenance &amp; terminals expense:</b>															
1941				2,410.26	10,541.11	12,951.37				3.20	135.00	138.20	2,413.46	10,676.11	13,089.57
1940				3,596.04	5,721.58	10,517.92				19,590.04	(1.13)	19,888.91	23,486.08	6,720.45	30,206.51
1939						4,819.01						73,518.27			78,337.28
1941 over 1940				(1,185.78)	3,819.53	2,433.45				(19,586.84)	136.13	(19,750.71)	(21,072.62)	3,955.66	(17,116.99)
1941 over 1939						8,132.36						(73,380.07)			(65,247.71)
<b>Insurance &amp; safety expense:</b>															
1941		1,013.56	1,013.56	792.85	2,127.16	2,920.01	632.25	965.44	1,597.69			11.92	1,437.02	4,106.16	5,543.18
1940		248.26	248.26	628.39	1,589.51	2,417.90	436.75	1,250.91	1,687.66			74.07	1,739.15	3,088.58	4,827.83
1939			215.39			528.05			344.02			2,796.05			3,093.51
1941 over 1940															
1941 over 1939		765.30	765.30	164.46	537.65	702.11	195.50	285.47	189.97			(662.09)	(302.13)	1,017.48	715.35
		798.17				2,591.86			1,253.67			(2,784.13)			1,859.67
<b>Administration &amp; general expense:</b>															
1941	2.00		2.00	12,920.65	32,287.64	45,208.20	251.30	690.00	831.50	1,066.00	3,358.34	5,025.00	11,820.51	36,245.98	51,066.50
1940	2.00	3,808.32	3,810.32	13,805.11	26,198.09	40,063.20	2,193.31	263.91	2,487.22	1,820.08	3,372.92	5,055.00	17,682.50	33,673.24	51,355.74
1939			3,306.75			19,111.93			1,448.75			16,752.00			40,712.23
1941 over 1940				(884.46)	6,089.55	5,205.09	(1,942.01)	300.09	(1,655.92)	(15.42)	(14.58)	(30.00)	(2,861.89)	2,572.74	(260.15)
1941 over 1939		(3,806.32)	(3,808.32)	(884.46)		26,096.27			(617.25)			(11,727.00)			10,354.36
<b>Depreciation &amp; expense:</b>															
1941		6,622.64	6,622.64	(443.24)	1,179.43	739.15	2,190.93	4,557.24	5,678.17	740.65	800.00	1,540.65	2,488.34	13,159.31	15,647.65
1940		3,543.95	3,543.95	805.70	1,123.27	1,925.97	2,917.00	6,123.93	9,040.94	300.66	584.48	885.14	1,623.36	11,375.64	15,399.00
1939			1,531.50			451.90			4,803.45			594.12			7,351.06
1941 over 1940															
1941 over 1939		3,078.69	3,078.69	(1,248.94)	56.16	(1,192.78)	(726.07)	(1,566.70)	(2,232.77)	(439.99)	215.52	655.51	(1,535.02)	1,783.67	218.65
		5,091.14				281.20			1,944.72			976.53			8,296.59
<b>Operating taxes &amp; licenses:</b>															
1941	49.33	3,663.50	3,712.83	1,981.61	8,019.15	10,033.76	2,444.78	5,400.00	7,801.78	691.02	1,290.00	1,861.02	5,036.74	18,342.65	23,379.39
1940	46.00	2,962.99	2,108.99	1,337.54	5,603.09	6,942.63	215.89	8,737.89	8,953.75	1,487.36	1,452.35	2,940.11	8,086.99	17,858.49	20,945.48
1939			1,020.74			3,065.15			1,671.96			4,824.88			10,592.73



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## Consolidated statement of income, profit and loss of the carrier companies included in the I. C. C. application for the fiscal year ended April 30, 1941, per books and as adjusted

Acct. No.	Consolidated Motor Lines, Inc.		McCarthy Freight System, Inc.		M. Moran Trans. Inc.		Lines Horton Motor Lines, Inc. 4/30/41		Barnwell Brothers, Inc. 4/30/41		Transportation, Inc. 4/30/41		Southeastern Motor Lines, Inc., 4/30/41		Arrow Carrier Corp., 4/30/41		Total for year ended 4/30/41 or as indicated	
	5/17/41 Per books	4/30/41 Adjusted	4/19/41 Per books	4/30/41 Adjusted	4/26/41 Per books	4/30/40 Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted
3000 Operating Revenues	\$5,062,633.66	\$5,062,633.66	\$2,062,171.42	\$2,095,705.85	\$3,018,608.42	\$3,034,908.10	\$4,716,637.83	\$4,718,697.66	\$2,256,048.86	\$2,256,048.89	\$1,339,181.94	\$1,338,659.04	\$478,486.08	\$478,486.08	\$1,558,936.89	\$1,558,936.89	\$20,492,705.13	\$ 0,744,076.17
Expenses:																		
4100 Equip. maint. & garage ex	477,081.34	487,886.59	198,582.49	204,026.88	383,113.59	361,593.62	573,205.00	587,221.38	233,744.52	233,744.52	176,767.54	171,382.96	52,575.15	50,128.01	169,238.01	161,240.86	2,264,307.64	2,257,224.82
4200 Transportation expense	4,858,122.55	4,858,122.55	770,576.38	585,671.40	1,153,248.88	1,110,199.95	853,059.26	852,834.79	614,959.72	614,959.72	293,854.97	294,107.41	134,587.41	134,587.41	207,523.73	207,196.13	4,601,932.10	4,657,679.27
4300 Terminal expense	1,944,870.02	1,944,870.02	172,655.79	479,915.67	574,745.96	627,205.12	1,000,210.38	999,207.10	377,486.39	377,486.39	361,786.29	361,953.43	61,906.06	61,103.05	511,611.89	511,611.89	5,305,245.78	5,364,154.68
4400 Sales tariff & adver. ex	130,823.70	130,823.70	70,226.87	70,371.94	70,395.43	71,208.73	214,328.71	215,106.95	123,798.58	123,798.58	63,882.07	63,949.57	20,617.09	20,617.09	40,850.80	40,850.80	734,893.25	737,496.46
4500 Insurance & safety expense	254,194.17	257,020.05	75,388.20	77,425.03	202,965.87	193,605.76	217,529.19	212,016.28	122,377.58	122,377.58	89,143.48	90,524.87	20,117.97	20,117.97	69,444.70	68,312.07	1,051,161.16	1,041,399.61
4600 Administrative & general ex	356,064.42	343,341.13	180,638.66	177,970.67	182,781.83	179,125.80	504,573.90	497,169.87	355,186.77	355,186.77	76,447.02	82,702.82	69,039.53	69,611.53	165,670.24	171,342.42	1,796,422.37	1,776,451.01
5000 Depreciation expense	173,668.80	183,761.51	101,146.89	108,323.18	132,533.88	123,885.88	249,987.72	263,105.33	95,928.91	95,928.91	61,505.53	64,857.34	16,286.04	15,912.29	98,107.80	100,198.58	929,165.57	935,972.52
5100 Amortization chargeable to oper									2,939.55	2,939.55	620.49		362.27	178.20			3,922.31	3,117.75
5200 Operating taxes & licenses	322,508.35	329,638.72	131,730.83	133,149.05	211,217.94	214,882.10	424,857.54	420,180.22	222,068.82	222,046.17	180,674.09	180,675.09	48,647.74	48,407.74	116,401.39	113,024.09	1,658,106.70	1,653,084.16
5300 Operating rents—Net	121,734.28	121,734.28	43,657.73	46,290.44	33,340.48	35,397.15	157,218.79	156,945.29	21,840.56	21,840.56	33,746.18	33,777.61	5,922.75	5,922.75	26,790.04	26,790.04	444,250.81	448,707.12
Total expenses	4,639,117.63	4,648,198.55	1,856,903.84	1,883,143.34	2,944,343.86	2,917,103.61	4,194,970.49	4,204,587.12	2,070,301.40	2,070,278.75	1,338,401.66	1,343,931.10	430,061.01	427,478.05	1,405,638.90	1,400,566.88	18,879,438.49	18,893,287.40
Net operating revenue	423,516.03	414,435.11	205,567.58	212,562.51	74,264.56	117,804.49	521,667.34	514,110.54	185,747.49	185,770.14	780.28	(5,272.06)	48,425.07	51,008.03	153,298.29	158,370.01	1,613,266.64	1,648,788.77
Other income	23,768.89	23,792.24	2,706.77	2,766.77			1,557.72	1,513.19	382.43	127.43	(493.50)	(493.50)	8.86	8.86	(4.39)	(4.39)	27,926.78	27,710.60
Gross income	447,284.92	438,227.35	208,274.35	215,329.28	74,264.56	117,804.49	523,225.06	515,623.73	186,129.92	185,897.57	286.78	(5,765.56)	48,433.93	51,016.89	153,293.90	158,365.62	1,641,193.42	1,676,499.37
Income deductions:																		
7000 Interest on long term oblig	11,491.92	11,491.92	9,709.14	10,371.11			1,965.07	1,867.95	8,117.47	8,117.47	3,395.54	3,096.22	317.15	317.15	727.50	727.50	33,758.72	36,074.37
7100 Other interest deductions	1,036.20	1,036.20	1,497.39	835.42	675.62	(52.19)	1,965.07	1,867.95	4,523.60	4,523.90	3,797.29	4,487.29	479.02	479.02	2,858.42	2,858.42	12,309.01	16,036.01
7500 Other deductions	1,492.77	1,492.77	(1.69)	508.40	3,631.00	3,728.60	16,134.32	11,349.17		(255.00)	5,883.65	803.83	213.75	213.75	1,800.00		33,677.79	17,931.82
Total income deductions	14,020.89	14,020.89	11,204.93	11,804.93	4,306.62	3,676.71	18,099.39	13,217.12	12,641.37	12,386.37	13,076.48	10,337.34	1,009.92	1,009.92	5,385.92	3,585.92	79,745.52	70,039.20
Net profit before income taxes	433,264.03	424,206.46	197,069.42	203,524.35	69,957.94	114,127.78	505,125.67	502,406.61	173,488.55	173,511.20	(12,789.70)	(16,102.90)	47,424.01	50,006.97	147,907.98	154,779.70	1,561,447.90	1,606,460.17
Adjustment of profit to year ended 4/30/41		(33,743.54)																(33,743.54)
8000 Provision for income taxes	126,638.08	153,193.34	44,537.21	74,156.58	17,482.38	29,850.13	170,287.87	128,214.12	48,360.67	48,361.67			14,676.15	21,903.66	37,147.12	429,209.87	485,599.21	485,599.21
Net profit after income taxes	306,625.95	271,013.12	152,532.21	129,367.77	52,475.56	84,277.60	334,837.80	374,192.44	125,127.88	125,149.53	(12,789.70)	(16,102.90)	47,424.01	35,330.82	126,004.32	117,632.58	1,132,238.03	1,087,117.42
Nonrecurring expenses incl. above		57,347.16		16,832.50				48,235.00		8,425.22			15,475.00		40,794.53		187,104.51	
Less: Income tax applicable thereto		31,196.84		8,517.25				12,308.58		3,880.39			6,654.25		9,790.68		72,348.99	
Net nonrecurring expenses		26,150.32		8,315.25				35,926.42		4,539.83			8,820.75		31,003.85		114,755.52	
Adjusted net profit excluding nonrecurring expenses		263,419.90		137,683.02			84,277.60	410,117.86		129,689.46		(16,102.90)	44,151.57		148,636.43		1,291,872.94	

NOTE.—The adjusted figures are subject to further audit and revision.

\* McCarthy Freight System, Inc. figures have been adjusted from 4/19/41 to 4/30/41.

212 Statement of Income, Profit & Loss of the Non-Carrier Companies Included in the I. C. C. Application for the Fiscal Year Ended April 30, 1941, Per Books and As Adjusted

	Southern New England Terminals, Inc.		Brown Equipment & Mfg. Co., Inc.		Conger Realty Co.		Barnwell Wheel & Brokerage Co.		Totals	
	Per Books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted
<b>Income:</b>										
Sales									\$843,342.96	\$843,342.96
Rental income	\$22,633.29	\$22,633.29			\$125,803.22	\$125,803.22	\$13,419.42	\$13,526.67	161,855.93	161,855.93
Total revenue	22,633.29	22,633.29	843,342.96	843,567.24	125,803.22	125,803.22	13,419.42	13,526.67	1,005,198.89	1,005,530.42
<b>Operating Cost:</b>										
Cost of Goods Sold			633,777.15	\$632,709.96					633,777.15	632,709.96
Transportation Expense			9,131.84	9,029.83			2.07	115.16	9,133.91	9,141.49
Insurance and Safety Expense	248.26	503.38	2,392.36	2,410.31	1,179.18	1,179.18	11.92	41.92	4,325.70	4,104.79
Administration & General Expense	3,810.32	3,810.32	39,118.74	39,165.92	5,525.21	5,525.21	5,039.56	5,025.00	48,493.85	48,541.90
Depreciation Expense	3,543.85	3,419.34	680.03	1,255.05	8,314.87	6,293.55	1,325.13	1,550.07	13,983.96	13,985.91
Operating Taxes & Licenses	2,112.32	2,112.32	7,596.70	7,540.02	11,142.64	9,033.71	2,053.57	1,857.02	22,805.23	20,552.07
Interest Expense	4,983.42	4,978.97	1,318.28	1,313.28	7,843.81	7,835.81	729.02	729.02	14,870.53	14,859.08
Total Operating Costs	14,700.27	15,751.33	693,993.10	693,705.77	29,706.69	24,852.91	9,158.29	9,285.19	747,599.35	743,595.20
Net Profit before Income Taxes	7,933.02	6,881.96	149,347.86	149,861.47	96,096.53	100,950.31	4,261.13	4,241.48	257,638.54	261,935.22
Provision for Income Taxes	492.86	1,096.02	44,899.65	44,208.25	29,230.64	29,230.64	1,093.03	840.56	75,706.18	75,381.47
Net Profit after Income Taxes	\$7,440.18	\$5,785.94	\$104,448.21	\$105,653.22	\$66,865.89	\$71,719.67	\$3,178.10	\$3,394.92	\$181,932.36	\$186,553.75
Nonrecurring Expenses included above				2,000.00						5,000.00
Less Income Tax Applicable thereto		3,000.00		495.00						1,005.00
Net Non-recurring Expenses										3,995.00
Adjusted Normal Annual Income		2,505.00		1,400.00						\$190,458.75
		\$6,290.94		\$107,053.22		\$71,719.67		\$3,394.92		

NOTE.—The book figures are stated as reflected in the books of the respective companies. The adjusted figures are subject to further audit and revision.

213. Summary of the Consolidated Statement of Income, Profit & Loss of the Carrier and Noncarrier Companies Included in I. C. C. Application for the Fiscal Year Ended April 30, 1941, Per Books, and as Adjusted.

McLEAN TRUCKING CO., INC., ET AL.

	Carrier companies		Noncarrier companies		All companies	
	Year ended April 30, 1941		Year ended April 30, 1941		Year ended April 30, 1941	
	Per books	Adjusted	Per books	Adjusted	Per books	Adjusted
Carrier operating revenues	\$20,492,705.13	\$20,544,076.17			\$20,492,705.13	\$20,544,076.17
Noncarrier operating revenues			\$1,005,194.89	\$1,005,530.42	1,005,194.89	1,005,530.42
Total revenues	20,492,705.13	20,544,076.17	1,005,194.89	1,005,530.42	21,497,900.02	21,549,606.59
Expenses:						
Cost of goods sold	2,354,307.64	2,257,224.82	653,777.15	632,700.96	613,777.15	622,700.96
Equipment maintenance & garage expense	4,691,932.90	4,657,679.27	9,133.91	9,141.49	2,273,441.55	2,295,365.31
Transportation expense	5,305,245.78	5,394,154.68			4,691,932.90	4,657,679.27
Trial expense	734,893.25	737,496.46			5,305,245.78	5,394,154.68
Sales, tariff & advertising expense	1,051,161.16	1,041,390.61	4,525.70	4,104.79	734,893.25	737,496.46
Insurance and safety expense	1,796,422.37	1,776,451.01	48,493.85	48,541.90	1,055,098.96	1,045,594.40
Administrative & general expense	1,926,195.57	1,965,972.52	13,853.98	13,985.91	1,844,916.22	1,834,922.91
Depreciation expense	3,922.31	3,117.75	22,895.23	20,552.07	943,059.55	960,658.43
Amortization chargeable to operations	1,655,106.70	1,653,084.16			3,922.31	3,117.75
Operating taxes and licenses	444,250.81	448,707.12			1,081,001.93	1,073,636.23
Operating ratio—net					444,250.81	448,707.12
Total expenses	18,879,438.49	18,895,287.40	732,969.82	728,736.12	19,612,128.31	19,624,025.52
Net operating revenue	1,613,266.64	1,648,788.77	272,599.07	276,794.30	1,885,775.71	1,925,581.07
Other income	27,926.78	27,710.90			27,926.78	27,710.90
Gross income	1,641,193.42	1,676,499.67	272,599.07	276,794.30	1,913,702.49	1,953,291.97

THE UNITED STATES OF AMERICA, ET AL.

Income deductions:						
Interest on long term obligations	33,758.72	36,071.37	14,870.53	14,859.09	48,630.25	50,920.45
Other interest deductions	12,309.01	16,086.01			12,309.01	16,086.01
Other deductions	33,677.79	17,691.82			32,677.79	17,931.83
Total income deductions	79,745.52	70,039.20	14,870.53	14,859.09	94,616.05	84,938.29
Net profit before income taxes	1,561,447.90	1,606,460.47	257,638.54	261,935.21	1,819,086.44	1,868,353.69
Adjustment of profit to year ended April 30, 1941		(33,743.54)				(33,743.54)
Provision for income taxes	429,209.87	465,599.21	75,708.18	75,381.47	504,916.05	560,860.06
Net profit after income taxes	1,132,238.03	1,087,117.42	181,930.36	186,553.75	1,314,170.39	1,273,751.17
Nonrecurring expenses included above		187,104.51		5,000.00		192,104.51
Less income taxes applicable thereto		72,348.99		1,065.00		73,413.99
Net nonrecurring expenses		114,755.52		3,935.00		118,690.52
Adjusted profit excluding nonrecurring expenses		1,201,872.94		190,418.75		1,392,331.69

NOTE. The adjusted figures are subject to further audit and revision.



214 Summary of Comparative Statement of Income, Profit & Loss of the Carrier and Noncarrier Companies Included in the I. C. C. Application for the Calendar Years 1939, 1940, and Four Months Ended April 30, 1941, per Books, and Estimated for the Eight Months May 1 to December 31, 1941

	Total all companies		
	Four months to 4/30	Eight months to 12/31	Twelve months to 12/31
<b>Freight Revenue:</b>			
1941	7,656,988.81	16,618,646.23	24,275,635.04
1940	5,902,973.11	12,837,613.02	18,740,586.13
1939			17,517,103.46
1941 over 1940	1,754,015.70	3,781,033.21	5,535,048.91
1941 over 1939			6,758,531.58
<b>Rental Income:</b>			
1941	55,764.99	121,046.64	176,811.63
1940	39,459.99	106,198.19	145,658.18
1939			60,580.66
1941 over 1940	16,305.00	14,848.45	31,153.45
1941 over 1939			116,224.97
<b>Sales:</b>			
1941	274,310.85	639,707.95	914,018.80
1940	287,484.91	569,032.11	856,517.05
1939			469,402.42
1941 over 1940	(13,174.06)	70,675.84	57,501.75
1941 over 1939			444,616.38
<b>Total Income:</b>			
1941	7,987,064.65	17,379,400.82	25,366,463.47
1940	6,229,918.04	13,512,843.32	19,742,761.36
1939			18,047,092.54
1941 over 1940	1,757,146.61	3,866,557.50	5,623,704.11
1941 over 1939			7,319,372.93
<b>Cost of Goods Sold:</b>			
1941	211,104.07	480,550.00	691,654.67
1940	211,729.40	422,672.48	634,461.88
1939			350,281.75
1941 over 1940	(624.73)	57,877.52	57,192.79
1941 over 1939			341,372.92
<b>Equipment Maintenance and Garage Expense</b>			
1941	813,556.40	1,716,362.52	2,529,918.92
1940	679,931.25	1,428,255.77	2,108,187.02
1939			1,976,999.42
1941 over 1940	133,625.15	288,106.75	421,731.90
1941 over 1939			552,919.50
<b>Transportation Expense:</b>			
1941	1,722,379.57	3,870,021.78	5,592,401.57
1940	1,444,363.36	2,979,081.81	4,428,445.17
1939			4,236,347.68
1941 over 1940	278,016.21	890,939.97	1,164,956.40
1941 over 1939			1,356,053.67

## Summary of Comparative Statement of Income, etc.—Continued

		Total all companies		
		Four months to 4/30	Eight months to 12/31	Twelve months to 12/31
215	Terminal Expense:			
1941	.....	1,097,984.72	4,210,664.79	6,208,649.51
1940	.....	1,607,194.83	3,307,956.82	4,915,091.65
1939	.....			4,342,675.20
1941 over 1940	.....	390,849.89	902,707.97	1,293,557.86
1941 over 1939	.....			1,865,974.31
Sales Tariff & Advertising Expense:				
1941	.....	251,417.33	537,680.94	789,098.27
1940	.....	229,891.48	485,239.33	715,130.81
1939	.....			601,383.10
1941 over 1940	.....	21,525.85	52,441.61	73,967.46
1941 over 1939	.....			187,715.17
Insurance & Safety Expense:				
1941	.....	385,280.10	821,953.70	1,207,233.80
1940	.....	336,198.11	659,173.87	995,371.98
1939	.....			1,044,626.66
1941 over 1940	.....	49,081.99	162,779.83	211,861.82
1941 over 1939	.....			162,607.14
Administrative and General Expense:				
1941	.....	690,546.47	1,280,789.47	1,881,335.94
1940	.....	552,216.36	1,248,434.73	1,800,651.09
1939	.....			1,587,262.51
1941 over 1940	.....	48,330.11	32,354.74	80,684.85
1941 over 1939	.....			294,073.43
Depreciation:				
1941	.....	309,137.66	724,048.27	1,033,183.93
1940	.....	331,460.56	658,689.57	980,150.13
1939	.....			897,259.15
1941 over 1940	.....	(22,322.90)	65,358.70	43,033.80
1941 over 1939	.....			135,926.78
Amortization Chargeable to Operations:				
1941	.....	1,270.36	2,464.08	3,734.44
1940	.....	1,203.54	2,712.53	3,916.07
1939	.....			5,584.14
1941 over 1940	.....	66.82	(248.45)	(181.63)
1941 over 1939	.....			(1,849.70)
Operating Taxes & Licenses:				
1941	.....	607,926.31	1,351,355.45	1,959,281.76
1940	.....	473,762.43	1,068,384.32	1,542,116.75
1939	.....			1,334,822.73
1941 over 1940	.....	134,163.88	282,971.13	417,135.01
1941 over 1939	.....			624,459.03
216	Operating Rents Net:			
1941	.....	169,830.36	318,630.36	478,860.72
1940	.....	137,667.40	283,426.45	421,087.85
1939	.....			341,644.67
1941 over 1940	.....	23,162.96	34,603.91	57,772.87
1941 over 1939	.....			137,216.05
Total Expenses:				
1941	.....	7,061,433.95	15,313,921.36	22,375,355.31
1940	.....	6,005,618.72	12,544,021.68	18,549,640.49
1939	.....			16,718,887.01
1941 over 1940	.....	1,055,815.23	2,769,899.68	3,825,714.82
1941 over 1939	.....			5,656,468.30

	1941 over 1940	1941 over 1939									(1.72)	(261.81)	(263.53) (197.12)	08.54	13.35
Oper. taxes & licenses:															
1941	128,078.44	220,120.00	348,178.44	43,845.20	112,687.00	156,532.20	74,828.45	166,000.00	240,828.45	5200	151,300.57	372,146.89	523,447.46	79,981.98	168,000.00
1940	106,847.19	194,429.91	301,277.10	35,852.13	87,885.63	123,737.76	58,633.96	136,389.49	195,023.45		111,211.23	273,550.97	384,768.20	61,425.86	137,395.54
1939			296,036.73			103,693.23			162,552.60				321,357.34		
1941 over 1940	21,231.25	25,690.09	46,901.34	7,993.07	24,801.37	32,794.44	16,194.49	29,610.51	45,805.00		40,089.34	98,589.92	138,679.26	18,556.12	30,604.46
1941 over 1939			52,141.71			50,838.97			78,276.45				202,110.12		
Operating rents—net:										5300					
1941	47,424.11	75,900.00	123,024.11	17,186.33	35,904.00	52,789.33	11,959.62	24,900.00	35,839.62		53,871.84	122,122.53	175,994.37	7,822.55	14,000.00
1940	43,900.34	74,310.17	118,210.51	11,372.36	26,472.40	37,844.76	10,665.42	21,080.86	32,646.28		46,575.09	103,346.95	149,922.04	4,964.84	14,978.01
1939			114,324.69			34,904.90			28,485.35				93,819.25		
1941 over 1940	3,523.77	1,289.83	4,813.60	5,812.97	9,431.60	14,944.57	694.20	2,519.14	3,213.34		7,296.75	18,775.58	26,072.33	2,857.71	(18.01)
1941 over 1939			8,699.42			17,794.43			7,374.27				80,175.12		
Total expenses:															
1941	1,819,363.56	3,288,500.00	5,107,863.56	610,174.28	1,595,250.00	2,205,424.28	1,027,638.03	2,507,381.00	3,535,019.03		1,495,111.92	3,304,724.89	4,799,836.81	735,143.36	1,537,300.00
1940	1,558,680.86	2,519,754.07	4,378,434.93	512,496.68	1,246,429.56	1,758,926.24	840,008.88	1,916,705.83	2,756,714.71		1,227,198.93	2,699,858.57	3,927,057.50	642,428.80	1,328,485.36
1939			4,411,040.31			1,582,165.89			2,440,979.95				3,314,404.99		
1941 over 1940	260,682.70	468,745.93	729,428.63	97,677.60	348,820.44	446,498.04	187,629.15	590,675.17	778,304.32		267,912.99	604,866.32	872,779.31	92,714.56	208,814.64
1941 over 1939			696,823.25			623,258.39			1,094,039.08				1,485,431.82		
Net operating income:															
1941	256,507.36	388,500.00	645,007.26	82,598.25	184,968.00	267,566.25	12,442.38	165,143.00	177,585.38		271,584.60	703,654.94	975,269.54	97,692.84	212,700.00
1940	70,095.66	167,008.77	187,104.43	19,738.47	122,009.33	142,707.80	(3,677.22)	61,822.18	58,144.96		72,953.45	250,082.74	323,030.19	(974.73)	96,731.28
1939			100,415.54			100,138.92			94,336.48				511,258.41		
1941 over 1940	236,411.80	221,491.23	457,902.83	62,859.78	61,998.67	124,858.45	16,119.60	103,320.82	119,440.42		108,631.15	453,572.20	652,239.35	98,667.57	115,968.72
1941 over 1939			544,591.72			167,427.33			83,248.90				463,961.13		
Other income:										6000					
1941	8,699.36	15,900.00	24,599.36	256.30	2,745.00	3,001.30					224.50	1,400.00	1,624.50	25.04	100.00
1940	4,349.02	15,033.08	19,382.10	11.16	2,450.47	2,461.63						1,333.22	-1,333.22	4.99	102.39
1939			8,092.23			2,448.43							92.00		10.63
1941 over 1940	4,350.34	866.92	5,217.26	245.14	294.53	1,539.67					224.50	66.78	291.28	20.05	(2.30)
1941 over 1939			16,507.13			552.87							1,531.99		114.41
Gross income:															
1941	265,206.62	404,400.00	669,606.62	82,854.55	187,713.00	270,567.55	12,442.38	165,143.00	177,585.38		271,584.60	703,654.94	976,864.04	97,717.88	212,800.00
1940	24,444.68	182,041.85	206,486.53	19,749.63	125,419.80	145,169.43	(3,677.22)	61,822.18	58,144.96		72,953.45	251,415.06	324,369.41	(969.74)	96,833.67
1939			108,507.77			102,587.35			94,336.48				511,351.01		
1941 over 1940	240,761.94	222,358.15	463,120.09	63,104.92	62,293.20	125,398.12	15,119.60	103,320.82	119,440.42		198,631.15	453,638.98	652,494.63	98,687.62	115,968.72
1941 over 1939			561,098.35			167,980.20			83,248.90				465,513.03		
Interest:										7000					
1941	2,566.94	4,250.00	6,816.94	3,297.39	7,900.00	11,197.39	659.67	1,359.00	2,018.67		646.51	1,500.00	2,146.51	3,564.24	6,500.00
1940	6,977.16	9,924.73	16,901.89	4,238.66	7,909.14	12,147.86	180.00	15.95	195.95		136.02	1,318.76	1,474.78	1,829.95	9,077.13
1939			20,920.44			19,301.15			3,090.11				3,784.54		
1941 over 1940	(4,410.22)	(5,674.73)	(10,084.95)	(941.27)	(9.14)	(8,903.46)	479.67	1,343.05	1,822.72		490.29	181.24	671.53	1,734.29	(2,577.13)
1941 over 1939			(14,103.50)			(8,103.76)			981.41				(1,638.23)		5,727.25
Other deductions:										7500					
1941	556.38	800.00	1,356.38	199.20	398.00	597.20	1,402.72	2,888.00	4,280.72		4,394.25	10,650.66	15,144.91	300.00	300.00
1940	565.25	936.39	1,501.64	394.20	(200.80)	193.40	1,397.78	2,228.28	3,626.06		2,346.75	11,649.07	13,986.82	929.10	912.10
1939			1,478.85			1,784.48			5,753.52				4,322.00		1,055.16
1941 over 1940	(8.87)	(136.39)	(145.26)	(195.00)	598.80	403.80	4.94	659.72	664.66		2,147.50	(989.41)	1,158.09	(929.10)	317.00
1941 over 1939			(122.47)			(1,187.28)			(1,462.80)				10,822.91		(755.16)
Total income deduc-															
tions:															
1941	3,123.32	-5,050.00	8,173.32	3,496.59	8,298.00	11,794.59	2,062.39	4,247.00	6,309.39		5,140.56	12,150.66	17,291.22	3,564.24	6,800.00
1940	7,542.41	10,881.12	18,403.53	4,632.86	7,708.34	12,341.20	1,577.78	2,244.23	3,822.01		2,502.77	12,958.83	15,461.60	2,759.05	9,060.13
1939			22,396.29			21,085.63			28,753.63				3,106.54		5,592.15
1941 over 1940	(4,419.09)	(5,811.12)	(10,230.21)	(1,136.27)	589.66	(546.61)	484.61	2,002.77	2,487.38		2,637.79	(808.17)	1,829.62	805.19	(2,260.13)
1941 over 1939			(14,228.97)			(9,291.04)			(2,444.24)				9,184.98		4,972.09
Net profit before income															
taxes:															
1941	262,083.30	399,350.00	661,433.30	79,357.99	179,415.00	258,772.95	10,379.99	169,896.00	171,275.99		246,098.54	692,904.28	959,572.82	94,153.64	206,000.00
1940	16,902.27	171,180.73	188,083.00	13,166.77	117,711.46	482,828.23	(5,255.00)	59,577.95	54,322.95		79,450.68	298,457.13	308,907.81	(3,728.79)	87,773.54
1939			86,108.48			81,501.72			85,582.85				503,244.47		
1941 over 1940	245,181.03	228,169.27	473,350.30	66,191.22	61,703.54	126,944.73	15,634.99	109,318.05	116,953.04		196,647.86	454,447.15	650,665.01	97,882.43	118,226.46
1941 over 1939			575,324.82			177,271.24			85,693.14				456,328.35		
Provision for income										80.00					
taxes:															
1941	58,886.62	224,291.97	283,178.59		102,806.91	102,806.91	3,113.64	53,137.20	56,250.84		58,464.51	226,495.42	284,957.93	26,245.81	57,425.61
1940		67,751.46	67,751.46		44,537.21	44,537.21		14,368.74	14,368.74			111,823.36	111,823.36		16,196.74
1939			14,137.06			13,053.08			17,752.84				110,703.52		
1941 over 1940	58,886.62	156,540.51	215,427.13		58,269.70	58,269.70	3,113.64	38,768.46	41,882.10		58,464.51	114,670.06	173,134.57	26,245.81	41,228.27
1941 over 1939			269,041.53			89,753.83			38,468.00				174,264.41		
Net profit after income															
taxes:															
1941	203,196.68	175,058.03	378,254.71	79,357.99	76,608.09	155,966.05	7,266.35	107,758.80	115,025.15		208,204.03	466,110.56	674,614.89	67,907.83	148,574.99
1940	16,902.27	103,429.27	120,331.54	15,116.77	73,174.25	88,291.02	(5,255.00)	45,209.21	39,954.21		79,450.68	126,633.77	197,084.45	(3,728.79)	71,573.80
1939			71,971.42			68,448.64			67,830.01				392,540.95		123,409.88
1941 over 1940	186,294.41	71,628.76	357,923.17	64,241.22	3,433.84	67,675.03	12,521.35	62,549.59	75,070.94		137,753.35	339,777.09	477,530.44	71,636.62	77,001.19
1941 over 1939			306,283.29			87,517.41			47,195.14				282,073.94		148,637.81
													93,072.94		27,632.59
															41,489.47









## Summary of Comparative Statement of Income, etc.—Continued

	Total all companies		
	Four months to 4/30	Eight months to 12/31	Twelve months to 12/31
<b>Net Operating Income—1941</b>	<b>925,630.70</b>	<b>2,065,479.46</b>	<b>2,991,116.16</b>
1940	224,299.32	968,521.64	1,193,129.96
1939			1,328,203.53
1941 over 1940	701,331.38	1,096,957.82	1,797,986.20
1941 over 1939			1,662,904.63
<b>Other Income:</b>			
1941	9,253.59	20,066.61	29,350.20
1940	3,521.34	18,381.74	21,903.08
1939			10,345.27
1941 over 1940	5,732.25	1,714.87	7,447.12
1941 over 1939			19,004.93
<b>Gross Income:</b>			
1941	934,884.29	2,085,546.07	3,020,466.36
1940	227,820.66	987,203.38	1,215,034.04
1939			1,338,550.80
1941 over 1940	707,063.63	1,098,342.69	1,805,432.32
1941 over 1939			1,681,909.56
<b>Interest:</b>			
1941	19,546.57	41,791.19	61,337.76
1940	22,394.28	45,679.14	68,273.42
1939			79,646.85
1941 over 1940	(2,847.71)	(4,087.95)	(6,935.66)
1941 over 1939			(18,312.09)
<b>Other Deductions:</b>			
1941	9,973.02	19,877.60	29,850.62
1940	6,522.85	19,163.87	25,686.72
1939			18,380.17
1941 over 1940	3,450.17	713.73	4,163.90
1941 over 1939			11,470.45
<b>217 Total Income Deductions:</b>			
1941	29,519.59	61,668.79	91,188.38
1940	28,917.13	65,043.01	93,960.14
1939			98,030.02
1941 over 1940	602.46	(3,574.22)	(2,771.76)
1941 over 1939			(6,841.64)
<b>Net Profit before Income Taxes:</b>			
1941	905,364.70	2,023,907.28	2,929,271.98
1940	198,905.53	922,160.37	1,121,053.90
1939			1,240,520.78
1941 over 1940	706,459.17	1,101,746.91	1,808,208.08
1941 over 1939			1,688,751.20
<b>Provision for Income Tax:</b>			
1941	172,367.98	706,400.74	968,658.72
1940	25,402.33	336,956.94	362,359.27
1939			269,799.12
1941 over 1940	146,965.65	459,443.80	606,309.45
1941 over 1939			698,869.60
<b>Net Profit after Income Tax:</b>			
1941	733,096.72	1,227,506.54	1,960,603.26
1940	173,503.20	585,203.43	758,704.63
1939			970,721.66
1941 over 1940	559,593.52	642,303.11	1,201,898.63
1941 over 1939			989,881.60

ASSOCIATED TRANSPORT, INC

Schedule Showing Incorporation Data, Capitalization, Officers & Directors of the Companies Included in I. C. C. Application

	Consolidated Motor Lines, Inc.				McCarthy Freight System Inc.	Southern New England Terminals, Inc.	M. Moran Transportation Lines, Inc.	Horton Motor Lines, Inc.
	Consolidated Motor Lines, Inc. (Conn.)	Consolidated Motor Lines, Inc. (Mass.)	United Arbour Express, Inc.	United Sales & Mfg. Co.				
1. Incorporation:								
State	Conn.	Mass.	Conn.	Conn.	Mass.	Mass.	N. Y.	N. C.
Date	April 1930	Feb. 1935	April 1929	June 1929	Sept. 1915	June 1930	May 1931	July 1930
2. Capitalization:								
A. Preferred	None	None	None	None		None	None	
Per Share					\$100.00			Class A \$20.00.
Authorized number of shares					1,000			Class B \$20.00
Outstanding number of shares								Class A 10,000
Authorized Amt.					None			Class B 10,000
Outstanding Amt.					\$100,000.00			Class A 2,666
Subscribed number of shares					None			Class A \$200,000
Subscribed Amt.								Class B \$200,000
B. Common:								Class A \$53,320
Par per share	\$5.00	\$100.00	No par	Class A \$100	No par	No par	No par	Class A 276
Authorized number of shares	200,000	950	5,000	Class B \$100				Class A \$5,520
Outstanding number of shares	2,199	23	1,656	Class A 250	7,500	500	250	
Authorized Amount				Class B 250	7,500	300	250	
Outstanding Amount	\$10,995.00	\$2,300.00	\$16,560.00	Class A 52	\$101,000.00	\$20,000.00	\$35,400.00	10,604
3. Officers:								
Chairman of Board	Everett J. Arbour	Jos. Arbour	Jos. Arbour	E. J. Arbour	John J. McCarthy	Chas. F. McCarthy	M. M. Moran	H. D. Horton
President	Jos. Arbour	John W. Ghent	John W. Ghent	Jos. Arbour	Geo. E. Bertucio	Geo. E. Bertucio	J. P. Atwater	J. D. Kluttz
Vice-Pres.	Earl E. Simpson	Wendell Simpson	Wendell Simpson	Wendell Simpson	Hutson E. Howell			J. N. Johnson
	Harold C. Davis				James L. Doyle			
Treasurer	Alexis P. Scott	E. J. Arbour	E. J. Arbour	A. P. Scott	Chas. F. McCarthy	John J. McCarthy	M. M. Moran	J. A. Sutton
Asst. Treasurer	Alex. P. Scott	A. P. Scott	A. P. Scott	A. P. Scott	Alex. W. Chisholm		M. M. Moran	J. A. Sutton
Secretary or Clerk	None	Hector Dery	None	None	Chas. F. McCarthy	None	None	None
Asst. Secretary	None	None	None	None	None	None	None	E. S. Mulwee
Comptroller	None	None	None	None	None	None	None	
4. Directors:								
Number per by-laws	9 only	3 to 7	3 to 5	3 to 3	3	3	3	3
	Joseph Arbour	Joseph Arbour	Joseph Arbour	Joseph Arbour	John J. McCarthy	John J. McCarthy	M. Moran	H. D. Horton
	Everett J. Arbour	E. J. Arbour	E. J. Arbour	E. J. Arbour	Chas. F. McCarthy	Chas. F. McCarthy	M. A. Sullivan	Mrs. H. D. Horton
	John W. Ghent	J. W. Ghent	J. W. Ghent	H. M. Joseloff	Geo. E. Bertucio	Geo. E. Bertucio		Henry C. Horton
	Alexis P. Scott	A. P. Scott	A. P. Scott					Benj. S. Horton
	Chas. H. Colpitts	H. M. Joseloff	H. M. Joseloff					J. A. Sutton
	Ed. LeRoy							J. D. Kluttz
	Hugh M. Joseloff							C. A. Cochran
	Earl E. Simpson							J. B. Evans
	Walter Mack, Jr.							J. D. Lawson
								B. L. Frazier
								M. B. Speir, Jr.
								J. N. Johnson
220		Brown Equipment & Mfg. Co., Inc.	Conger Realty Co., Inc.	Barnwell Brothers, Inc.	Barnwell Warehouse & Brokerage Co.	Transportation, Inc.	Southeastern Motor Lines, Inc.	Arrow Carrier Corp.
1. Incorporation:								
State		N. C.	N. C.	N. C.	N. C.	Georgia	Virginia	N. J.
Date		July 1937	August 1938	September 1930	October 1931	August 1930	February 1938	March 1920
2. Capitalization:								
A. Preferred		None	None			None	None	
Par per share								\$100.00
Authorized number of shares				100.00	100.00			2,000
Outstanding number of shares				500	250			1,380
Authorized Amount				323	228			\$200,000.00
Outstanding Amount				\$97,000.00	\$25,000.00			\$138,000.00
B. Common:				\$32,900.00	\$228,000.00			
Par per share		\$100.00	\$100.00	\$100.00	\$100.00	\$1.00	\$100.00	\$50.00
Authorized number of shares		1,000	1,000	1,500	250	25,000	500	2,500
Outstanding number of shares		1,000	1,000	1,000	20	25,000	500	1,976.5
Authorized Amount		\$100,000.00	\$100,000.00	\$150,000.00	\$25,000.00	\$25,000.00	\$50,000.00	\$125,000.00
Outstanding Amount		\$100,000.00	\$100,000.00	\$100,000.00	\$2,000.00	\$25,000.00	\$50,000.00	\$98,825.00
Officers—Chairman of Board:								
President		J. N. Johnson	R. G. Conger	R. W. Barnwell	R. W. Barnwell	A. S. Clay	C. C. Brock	John E. Ackerman
Vice President		J. L. Brown	H. G. Ivler	T. L. Walker	J. H. Barnwell	J. G. Coley	J. T. Howard	George Whitehead
						W. F. Wemberly	B. L. Huntsman	J. J. Buckley, Jr.
						R. W. Barnwell	V. P. Graham	
						W. L. Moore, Jr.		
						W. P. Moore		
						E. C. Spinks	L. Gosweiler	Huber R. Duffy
						E. C. Spinks	B. S. Fain	Frank J. Davies
Treasurer		Roy Boyd	O. P. Roberson	James A. Barnwell	James A. Barnwell			
Secretary or Clerk		Roy Boyd		John H. Barnwell	James A. Barnwell			
Asst. Secretary								
1. Directors:								
Number per bylaws		6	3	5	5	7 to 21	5	3
		H. D. Horton	H. D. Horton	R. W. Barnwell	R. W. Barnwell	R. W. Barnwell	C. C. Brock	J. E. Ackerman
		J. A. Sutton	O. P. Roberson	T. C. Walker	John H. Barnwell	W. E. Wemberly	V. P. Graham	J. J. Buckley, Jr.
		J. D. Kluttz	R. G. Conger	James A. Barnwell	James A. Barnwell	J. G. Coley	L. Gosweiler	Geo. Whitehead
		C. A. Cochran				W. L. Moore, Jr.	B. L. Huntsman	
		J. N. Johnson				W. P. Moore		
		J. L. Brown				E. C. Spinks		

221 SCHEDULE OF STOCKHOLDERS OF COMPANIES INCLUDED IN  
I. C. C. APPLICATION AS OF APRIL 30, 1941

## Carrier Companies

## CONSOLIDATED MOTOR LINES, INC.

Stockholders	Preferred		Common	
	No. of shares	%	No. of shares	%
Joseph Arbour	none		293	13.3
Emma Arbour	none		290	11.8
Everett J. Arbour	none		293	13.3
Helen Arbour	none		180	8.2
Everett J. Arbour, Trustee for Shirley Arbour	none		40	1.8
Everett J. Arbour, Trustee for Frances Arbour	none		40	1.8
John W. Ghent	none		35	1.6
Elsie Cotter Ghent	none		41	1.8
John W. Ghent, Trustee for the benefit of:				
Mary Elizabeth Ghent	none		5	.2
Elsie G. Ghent	none		5	.2
Walter H. Ghent	none		5	.2
John W. Ghent, Jr.	none		5	.2
Barbara A. Ghent	none		5	.2
Helen B. Joseloff	none		40	1.8
Phoenix Security Corp.	none		774	35.2
Karl E. Simpson	none		32	1.5
Wendell E. Simpson	none		43	2.0
Laura Bess Payson	none		43	2.0
Hazel E. Simpson	none		43	2.0
Alexis P. Scott	none		17	.8
			2,199	100.0

## McCARTHY FREIGHT SYSTEM, INC.

John J. McCarthy	none		2,335	31.13
George E. Bertucio	none		900	12.00
Charles F. McCarthy	none		665	8.89
Isabel J. McCarthy	none		1,000	13.33
Kathleen E. McCarthy	none		1,000	13.33
Alexander W. Chisholm and Edwin F. Weber, trustees under an indenture of trust dated June 8, 1940, for the benefit of the following persons, respectively:				
Elizabeth Jane Bertucio & Others	none		400	5.33
Mary Louise Bertucio & Others	none		400	5.33
Robert Charles Bertucio & Others	none		400	5.33
Louise M. Bertucio & Others	none		400	5.33
			7,500	100.00

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## M. MORAN TRANSPORTATION LINES, INC.

Michael M. Moran	none			
Norman Joseph	none			
Amelia M. Moran	none		250	100.0
Mamie Moran	none			
As trustees:				
Michael M. Moran	none			
Norman Joseph	none			
Amelia M. Moran	none			
			250	100.0

<sup>1</sup> This company has a small contract operation and agrees that if the application be granted it will at once seek permission to discontinue or dispose of this contract operation.



## Carrier Companies—Continued

## HORTON MOTOR LINES, INC.

Stockholders	Preferred		Common	
	No. of shares	%	No. of shares	%
H. H. Horton	none		8,688	82.0
Mrs. D. D. Horton	none		636	6.0
Henry Clay Horton	none		636	6.0
Benjamin Stevens Horton	none		636	6.0
J. A. Sutton	none		1	
J. D. Kluttz	none		1	
C. A. Cochran	none		1	
J. N. Johnson	none		1	
J. B. Evans	none		1	
J. D. Lawson	none		1	
B. L. Frager	none		1	
M. B. Speir, Jr.	none		1	
Employees 8% preferred stock to be redeemed before closing date	2,666	100.0	none	
	2,666	100.0	10,804	100.0

## BARNWELL BROTHERS, INC.

R. W. Barnwell	18 1/10	5.7	20	2.0
Willard Smith Barnwell	32	16.1	40	4.0
Robert William Barnwell, Jr.			6 1/2	.65
John H. Barnwell	14 1/10	4.5	59	5.9
Deloris Morrow Barnwell	20	6.2	54	5.4
Mary Barnwell			5	.5
James A. Barnwell	14 1/10	4.6	48 1/2	4.85
Cornelia Vincent Barnwell	21	6.5	70	7.0
Hannah Bomse			28	2.8
William R. Lacey	4 1/10	12.5	82	8.2
Arthur D. Crowe			28	2.8
M. M. Stuart	15	4.7	50	5.0
F. H. Mendenhall			10	1.0
Mary Thomas Walker			5	.5
P. L. Walker	3	1.0	5	.5
J. Hardy Hurst			5	.5
A. Hall Barnwell			4	.4
R. P. Harrison, Jr.	20	6.2		
E. C. Crowder	10	3.1		
223 Wachovia Bank and Trust Company as trustee under various trust agreements dated May 10, 1940, is the owner for the benefit of the following persons respectively:				
Robert William Barnwell, Jr.			18	1.8
Willard Holt Barnwell			36	3.6
Joseph Clarendon Barnwell			36	3.6
Eleanor Smith Barnwell			20	2.0
Betty Lynn Barnwell			20	2.0
Richard Brantley Barnwell			20	2.0
Julian Forrest Barnwell			20	2.0
Barnwell Warehouse & Brokerage Co.	93	28.9	310	31.0
	323	100.0	1,000	100.0

## TRANSPORTATION, INC.

A. S. Clay	none		25,000	100.0
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## SOUTHEASTERN MOTOR LINES, INC.

Clifford C. Brock	none		207.5	59.5
B. L. Huntsman	none		155	31.9
J. T. Howard	none		35	7.0
Vance P. Graham	none		12.5	2.5
			560	100.0

## ARROW CARRIER CORPORATION

The Transport Company	1,120	81.2	1,976.5	100.0
Stock 20% being presently acquired	260	18.8		
	1,380	100.0	1,976.5	100.0

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## Noncarrier Companies

## SOUTHERN NEW ENGLAND TERMINALS, INC.

Stockholders	Preferred		Common	
	No. of Shares	Per Share	No. of Shares	Per Share
Isabel J. McCarthy	none		134	44.68
Kathleen E. McCarthy	none		66	22.00
George E. Bertucio	none		36	12.00
Alexander W. Chisholm and Edwin F. Weber, trustees under an indenture of trust dated June 6, 1940 for the benefit of the following persons, respectively:				
Elizabeth Jane Bertucio & Others	none		16	5.33
Mary Louise Bertucio & Others	none		16	5.33
Robert Charles Bertucio & Others	none		16	5.33
Louise M. Bertucio & Others	none		16	5.33
			300	100.00

## BROWN EQUIPMENT &amp; MFG. CO., INC.

H. D. Horton	none		97 5/16	97.575
J. A. Sutton	none		4 1/2	.485
J. L. Brown	none		4 1/2	.485
J. N. Johnson	none		4 1/2	.485
J. D. Klutiz	none		4 1/2	.485
C. A. Cochran	none		4 1/2	.485
			1,000	100.000

## CONGER REALTY COMPANY, INC.

H. D. Horton	none		98 0/10	98.09
R. G. Conger	none		97 1/10	.97
O. P. Roberson	none		97 1/10	.97
			1,000	100.00

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## BARNWELL WAREHOUSE &amp; BROKERAGE CO.

R. W. Barnwell	12	5.2	1	5.0
Willard Smith Barnwell	84	36.8	1	5.0
John H. Barnwell			1	5.0
Deloris Morrow Barnwell	36	15.8	1	5.0
James A. Barnwell	48	21.1	2	10.0
Hannah Bomse			1	5.0
William R. Lacey	48	21.1	1	5.0
Arthur D. Crowe			1	5.0
Wachovia Bank and Trust Company, trustee under agreements dated May 10, 1940, for the benefit of the following persons, respectively:				
Willard Holt Barnwell			1	5.0
Joseph Clarendon Barnwell			1	5.0
Eleanor Smith Barnwell			1	5.0
Betty Lynn Barnwell			1	5.0
Richard Brantley Barnwell			1	5.0
Julian Forrest Barnwell			2	10.0
Dorothy Lea Barnwell			2	10.0
Robert Alexander Barnwell				
	228	100.0	20	100.0

## SOUTHERN NEW ENGLAND TERMINALS

This company owns several terminals which are leased to McCarthy Freight System, Inc.

## BROWN EQUIPMENT &amp; MFG. CO., INC.

This is a manufacturing company making and selling equipment to the motor vehicle industry.

## CONGER REALTY COMPANY, INC.

This company owns several terminals which are leased to the Horton Motor Lines, Inc.

## BARNWELL WAREHOUSE &amp; BROKERAGE CO.

This company owns a warehouse and a few pieces of equipment. The warehouse is used to store freight and the equipment is used in conjunction with the operation of Barnwell Brothers, Inc.

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WHOLLY OWNED SUBSIDIARIES OF  
CONSOLIDATED MOTOR LINES, INC. (CONN.)

## CONSOLIDATED MOTOR LINES, INC. (MASS.)

This company owns certain equipment which is held in its name because of state licensing requirements.

## UNITED ARBOUR EXPRESS, INC.

This company has a small contract operation which it is hereby agreed will be discontinued or disposed of should the withdrawal application be granted.

## UNITED SALES &amp; MFG. CO.

This company is engaged in buying and selling equipment connected with the motor truck industry.

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## EXHIBIT B-8

BRIEF DESCRIPTION OF NATURE, EXTENT AND SCOPE OF MOTOR CARRIER  
OPERATIONS OF CARRIERS, CONTROL OF WHICH : PROPOSED TO BE  
ACQUIRED

The following motor carriers perform transportation as common carriers of commodities generally, over regular and irregular routes in and between the States shown opposite their names, and pursuant to operating authority in docket numbers as indicated:

Horton Motor Lines, Inc.: Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Penn-

sylvania, New Jersey, New York, District of Columbia. Docket Nos. M. C.

Barnwell Bros., Inc.: South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, District of Columbia. Docket Nos. M. C.

Southeastern Motor Lines, Inc.: Tennessee, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, District of Columbia. Docket Nos. M. C.

Transportation, Inc.: Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee. Docket Nos. M. C.

McCarthy Freight System, Inc.: Massachusetts, Rhode Island, Connecticut, New York. Docket Nos. M. C.

Consolidated Motor Lines, Inc.: Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania. Docket Nos. M. C.

M. Moran Transportation Lines, Inc.: New York, Pennsylvania, Ohio, New Jersey. Docket Nos. M. C.

Arrow Carrier Corporation: Pennsylvania, New Jersey, New York, Docket Nos. M. C.

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## EXHIBIT C

## NATURE OF PROPOSED TRANSACTION AND TERMS AND CONDITIONS THEREOF

Attached to original and each copy of this application are the following exhibits, identified as indicated:

C-1—Copy of contract for acquisition of the stock of Horton Motor Lines, Inc., a motor carrier. Contracts of like effect as to the body thereof have been entered into with the various other carriers, control of which is proposed to be acquired.

C-1a—Copy of contract for acquisition of the stock of Conger Realty Co., Inc., a non-carrier company. Contracts of like effect as to the body thereof have been entered into with the various other non-carriers, control of which is proposed to be acquired.

C-1b—Copies of Exhibits A, E, F, H, I and J of the aforesaid contracts of the carrier and non-carrier companies, in each case where such exhibits differ as to terms or conditions from the terms or conditions of the like exhibits in the aforesaid Horton and Conger contracts.

C-1c—Statement containing copy or explanations of any other material differences between the aforesaid Horton and Conger contracts, and the contracts of any of the aforesaid carrier and non-carrier companies.

C-2—No statement containing such data as applicant feels will properly explain and support the financial consideration involved

is furnished because the proposed plan contemplates no consideration other than an exchange of stock as more particularly set forth in Exhibits C-1 thru C-1a, b, c.

C-3—Signed opinion of counsel that the transaction proposed will be legally authorized and valid, if approved by the Commission, with specific reference to any specially pertinent provisions of charter or articles of incorporation of applicant.

C-4—Statement containing name and address of each independent public, or independent, certified public accountant who prepared, or directed the preparation of, the data described in Exhibits A and B: Harry J. Reicher and Company, Empire State Building, New York, New York.

C-5—Map showing operations of parties involved in this proceeding.

C-6—Statement containing the following information for each item of encumbered real property proposed to be acquired: (a) Description of the real property encumbered. (b) Amount of encumbrance and description thereof.

C-7—"Giving Effect" Balance Sheets for applicant as of the latest available date, showing the estimated effect of the consummation of the transaction proposed.

229 C-8—For "Giving Effect" Income Statement for the calendar year to latest available date for applicant, showing estimated effect if the proposed transaction had been consummated prior to the period covered; see Exhibited B-6 attached hereto.

C-9—For brief description of nature, extent and scope of non-carrier companies, controls of which is proposed to be acquired, see Exhibit B-7 attached hereto.

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## EXHIBIT BMC-45 C-1

S

Agreement made this 11th day of June 1941, between H. D. Horton, Charlotte, N. C.; Mrs. H. D. Horton, Charlotte, N. C.; Henry Clay Horton, Charlotte, N. C.; Benjamin Stevens Horton, Charlotte, N. C.; J. A. Sutton, Charlotte, N. C.; J. D. Kluttz, Charlotte, N. C.; C. A. Cochran, Charlotte, N. C.; J. N. Johnson, Baltimore, Md.; J. B. Evans, New York City; J. D. Lawson, Charlotte, N. C.; B. L. Frazier, Charlotte, N. C.; M. B. Speir, Jr., Charlotte, N. C.; hereinafter referred to as "First Parties," and Associated Transport, Inc., a Delaware corporation; hereinafter referred to as "Second Party."

Witnesseth: Substantial economies and increased efficiency can be accomplished by combining the ownership and control of the stock and/or assets of certain motor carriers of freight now operating along the Atlantic seaboard, and said combined ownership



and control would result in improved motor freight movement favorably affecting the shipping public, would promote safe and sound economic conditions in transportation and would aid and contribute to the progress of the national defense program.

Such combined ownership and control is a joint enterprise to carry out a plan of reorganization, and Second Party is prepared to act as the agency for accomplishing said combination of ownership and control and said plan of reorganization;

231 Now, therefore, in consideration of the mutual promises of the parties hereinafter contained, it is agreed:

First: The representations and warranties made by First Parties on Exhibits A to J hereto annexed are made part of this agreement and incorporated herein by reference.

First Parties represent and warrant that the books and records of the company named on Exhibit A hereto annexed, truthfully, accurately and completely contain all of the information necessary to disclose the correct financial condition of said company as of April 30, 1941, and to disclose the correct net profits of said company for the twelve months' period ending April 30, 1941.

Second: Second Party represents and warrants (1) that it has no interest, direct or indirect, in any motor, rail or water carrier whether operating or nonoperating, either as a stockholder or by means of a holding or investment company or companies, voting trust or trusts, or in any other manner, other than that which results from the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof; (2) that it has no subsidiaries or affiliates and has incurred no liabilities of any nature, except for compensation for services, for expenses in connection with its organization, for legal fees in connection with the preparation of this agreement and the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof, and for the effectuation or attempted effectuation of the purposes thereof; (3) that Second Party is a validly organized Delaware corporation, that its directors at this time are H. D. Horton, and B. M. Seymour, 232 and its officers are: Chairman of the Board, H. D. Horton; president, Burge M. Seymour; vice president, office vacant; secretary, B. D. Ryan; treasurer, Burge M. Seymour; that the only issued and outstanding stock of Second Party is 1,000 shares of common stock owned on the books of Second Party by H. D. Horton, and that said shares of stock are fully paid; (4) that the charter of Second Party and the amendments thereto are as filed in the office of the Secretary of State of Delaware, that no amendments to said charter have been filed subsequent to May 26th, 1941, and that the authorized stock, the classes, preferences

and rights thereof are as set forth in said charter and amendments; (5) that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of the authorized and unissued stock of Second Party, except such agreements as are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof.

Third: Each of the First Parties agrees to exchange all of the issued and outstanding capital stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit, for the 6% cumulative convertible \$100 par value preferred stock, and for the \$1 par value common stock of Second Party (all of the said stock of the Second Party to be fully paid and non-assessable, free and clear of any and all liens and encumbrances

whatsoever), the number of each class of said shares which  
233 First Parties collectively shall receive, to be arrived at as follows:

(1) The number of preferred shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of preferred shares equal to four-fifths of the net worth, as determined in the manner hereinafter provided, of the company named on Exhibit A annexed hereto as of April 30, 1941.

(2) The number of common shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of common shares to be arrived at by deducting from the net profits, determined in the manner hereinafter provided, of the company named on Exhibit A for the twelve months ending April 30, 1941, a sum equal to 6% of the par value of the preferred shares to be received by First Parties collectively under subdivision (1) of this paragraph Third, and by dividing the remainder by 2.

First Parties agree to furnish to Harry J. Reicher & Company, certified public accountants of the State of New York, with offices in New York City, no later than May 31, 1941, a balance sheet of the company named on Exhibit A as of April 30, 1941, and an operating statement of said company for the twelve months' period ending April 30, 1941. Said balance sheet and operating statement shall be drawn and prepared in accordance with Interstate Commerce Commission practices and procedure in effect on April 30, 1941.

Net worth, for the purposes of subdivision (1) of this paragraph Third, and net profits for the purposes of subdivision (2) hereof, shall be determined as follows: The net worth and net profits of said company as shown on the above mentioned balance sheet and operating statement shall be adjusted by Harry J. Reicher of Harry J. Reicher & Company in the following items and respects:

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(a) All values for good-will, franchises, costs of acquiring franchises, organization expenses, and such deferred expenses as are not in his opinion apportionable on an accurate mathematical basis, shall be eliminated and disregarded.

(b) Provision shall be made for taxes for the twelve months' period ending April 30, 1941, on the basis of 1940 rates.

(c) An inventory of tires on equipment shall be taken at the beginning and end of the twelve months' period ending April 30, 1941, and computed at 50% of cost.

(d) The reserve for uncollectible freight accounts receivable shall be one-sixth of one percent of the freight revenues of said company for the twelve months ending April 30, 1941, or the average actual annual loss of said company on such accounts for the three years ending December 31, 1940, whichever is greater, and said reserve shall be established both at the beginning and end of said twelve months' period.

(e) The following annual depreciation rates shall be applied to the types of assets enumerated below.

(i) Furniture, fixtures, and other equipment, 8%.

(ii) Brick or concrete buildings owned in fee, 2%.

(iii) Leasehold improvements, excluding buildings, rate to be determined by the term of the lease not taking into account any options for renewal.

(iv) Buildings constructed on leased property, rate to be determined by the term of the lease, taking options for renewal, if any, into consideration, but in no event lower than the rate provided in subdivision (ii) or (v) hereof.

(v) Other buildings, fair rate to be fixed in his discretion within the limits, if any, set by the Treasury Department.

235 (vi) Trucks, 25%.

(vii) Trailers, 10%.

(viii) Tractors, light, 25%; heavy, 20%.

(ix) Passenger cars, 33 $\frac{1}{3}$ %.

(x) Service cars, 25%.

Depreciation with respect to any of the items from (vi) to (x) hereof inclusive, shall cease when 95% of the cost of any said item has been depreciated.

(f) Any net profits or losses arising out of entries made by the company named on Exhibit A during the twelve months' period ending April 30, 1941, adjusting assets or liabilities or inventories on parts, tires, supplies, stationery, gas and oil, shall be charged or credited directly to surplus, unless the amount allocable to said twelve months' period can be determined. If the amount allocable to said twelve months' period can be determined, it shall be treated as a profit or loss for said twelve months.

(g) If any item for rebuilding or maintenance of revenue equipment has been capitalized by the company named on Exhibit A while the book value of said equipment is more than 20% of its original cost, the amount so capitalized shall be eliminated, except that any expenditures for completion of vehicles made during the first sixty days of ownership may be capitalized.

(h) In any respect where a principle or method of accounting has been used or applied by the company named on Exhibit A which is not in accord with the principles or methods of accounting prescribed in the Interstate Commerce Commission's "Uniform System of Accounts" in effect on April 30, 1941, adjustments shall be made to conform to such principles or methods; if no applicable principle or method is prescribed in said publication, adjustment, as in his opinion may seem proper, shall be made by him in any respect where a principle or method of accounting has been used or applied by said company which is not, in his opinion, in accord with sound accounting principles or methods, except that nothing herein contained shall authorize adjustments inconsistent with or different from those provided in items (a) to (g) hereof inclusive where those items are applicable, nor authorize any adjustment in connection with any compensation for services item.

(i) To correct any inaccuracies or discrepancies whatsoever.

236 In all cases where reserves are set up or adjusted, the rate or method applied at April 30, 1941, shall likewise be applied at May 1, 1940, to determine the correct allocation of profits or losses between the said twelve months' period and prior periods.

It is expressly understood and agreed that for the purpose of determining the number of shares of preferred stock to be received by First Parties collectively, the following method shall be followed: Harry J. Reicher shall first determine the net worth of the company named on Exhibit A as adjusted in all respects described in subdivisions (a) to (d) and (f) to (i) hereof all inclusive. He shall then determine whether the adjustments provided for in subdivision (e) result in a net increase or net decrease in value of the items affected thereby.

If the adjustments under subdivision (e) result in a net increase in said values, the amount of said increase shall not entitle First Parties to any shares of preferred stock therefor, but they shall receive therefor a total par value of common shares equal to 5% of four-fifths of the amount of said increase.

If the adjustments under subdivision (e) result in a net decrease in said value, the amount of said decrease shall be deducted from the net worth of said company as adjusted in all

respects described in subdivision (a) to (d) and (f) to (i) hereof all inclusive.

It is further understood and agreed that all determinations by Harry J. Reicher under the provisions of this paragraph

237 Third, shall be binding and conclusive on all parties here-  
to, unless within fifteen days after mailing of said determinations by Harry J. Reicher to the designee provided for herein, said designee shall mail to all of the designees under the contracts described in paragraph Fourteenth hereof, at the addresses set forth in their respective contracts, notice that he disputes said determinations, or any of them, with a statement of his reasons therefor, and unless two-thirds of all said designees, including the one provided for herein, shall revise the determinations, or any of them, made by Harry J. Reicher and mail notice of their action to the designee provided for herein. Should at least two-thirds of said designees fail to meet, hear and reach a vote upon such disputed determinations within fifteen days after such notice of dispute is mailed to them, performance of this agreement shall, upon the written election of First Parties, be suspended until at least two-thirds of said designees shall have met, heard the dispute with regard to such determinations and reached a vote thereon; but all determinations by Harry J. Reicher shall remain in force unless upon such vote it is revised by the vote of two-thirds of all said designees, including the one provided for herein. If such determinations, or any of them, are revised by two-thirds of said designees, such revision shall, insofar as it affects and with respect to the items so affected, supersede his determinations and shall be final, binding and conclusive on all parties, unless within ten days after such revision, the designee provided for herein shall elect to accept the original determinations by Harry J. Reicher, in which event said original determinations shall be final, binding and conclusive on all parties.

238 Fourth: It is agreed that each of the First Parties or their respective nominees shall receive that percentage of the total number of shares of each class of stock of Second Party to be received by all of the First Parties to this agreement collectively, which is shown opposite his name in columns 4 and 5 on Exhibit A. In determining the amount of common or preferred stock to be received by First Parties either collectively or by any of them, a fractional share of one-half or over shall entitle such First Parties to a full share, and a fractional share of less than one-half is hereby waived by each of said First Parties.

Fifth: For the purpose of providing for obligations incurred or to be incurred by Second Party in connection with bringing



about or attempting to bring about the combined ownership and control and reorganization contemplated hereby, each of the First Parties agrees to purchase or cause to be purchased at par, that percentage of 8,555 shares of the common stock of Second Party which is set forth next to his name in column 5 on Exhibit A, such stock to be paid for in cash at the time of the execution hereof. Second Party agrees to sell said shares of stock to First Parties, and agrees that such shares shall be nonassessable and free and clear of all liens and encumbrances.

Sixth: First Parties warrant and agree that between April 30, 1941, and the closing date as hereinafter fixed, or the time of cancellation of this agreement in the manner hereinafter provided:

239 (1) No equipment or other assets of the company named on Exhibit A hereof has been or will be sold, exchanged or otherwise disposed of, except in the ordinary course of business, and the equipment and facilities of said companies have been and will be maintained continuously during said period in accordance with existing standards of maintenance.

(2) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will purchase, lease or build, or make any commitment to purchase, lease or build, any property except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets, and said company has not and will not incur any expenses or liabilities except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets.

(3) No stockholder or officer of the company named on Exhibit A has received or shall receive any greater compensation or expense allowance (as distinguished from equal expenses) than the total of his compensation and expense allowance for the twelve months' period ending April 30, 1941, prorated in accordance with the time elapsed between April 30, 1941, and the closing date hereof, or the cancellation hereof, in the manner hereinafter provided. No compensation or expense allowance agreement extending beyond the closing date hereof has been or will be made with any stockholder, officer or Executive employee of said company.

(4) Insurance coverage in at least the amount and kind set forth on Exhibit G annexed hereto, will be continuously maintained in force and effect.

(5) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will acquire any interest, direct or indirect, in any other motor carrier or any rail or water carrier.

(6) The company named on Exhibit A has not and will not authorize the creation of any bonded indebtedness, secured or unsecured.

(7) Any sale, hypothecation or transfer by any of First Parties of his stock in the company named on Exhibit A, shall be expressly subject to all of the terms, conditions and provisions of this agreement.

(8) There have been and will be no changes in the charter or bylaws of the company set forth on Exhibit A.

(9) No stock shown on Exhibit A to be authorized but unissued, shall be issued.

(10) No dividends have been or will be declared or paid by the company named on Exhibit A.

240 (11) No distribution from assets will be made by the company named on Exhibit A except in the usual course of business and except as expressly authorized by this contract.

It is understood and agreed that on or after June 1, 1941, any one or all of the provisions contained in this paragraph Sixth may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth hereof including the designee provided for herein.

Seventh: Second Party warrants and agrees that it will not, prior to the closing date as hereinafter fixed or the time of cancellation of this agreement in the manner hereinafter provided:

(a) Amend or modify its charter or bylaws.

(b) Consolidate or merge with any other company, or sell, lease or mortgage all or substantially all of its assets.

(c) Create any bonded indebtedness, secured or unsecured.

(d) Create or issue any different class of stock than those described in this agreement.

(e) Issue any shares of any of the authorized classes of its stock in addition to those already issued and those which may be issued pursuant to paragraphs Third and Fifth of this agreement, and pursuant to the corresponding paragraphs of the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth hereof.

It is understood and agreed that any one or all of the provisions contained in this paragraph Seventh may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth hereof including the designee provided for herein.

241 Eighth: Upon the execution of the agreements to be executed simultaneously herewith as provided in paragraph Fourteenth hereof, Second Party agrees that it will promptly file

with the Interstate Commerce Commission such application or applications, including but not limited to applications for merger or consolidation and amendments thereto as may be deemed necessary or advisable by Second Party for the required authority to bring about the combined ownership and control contemplated herein, including such authority for the issuance of its securities as may be by Second Party deemed desirable or necessary in connection therewith.

Ninth: First Parties agree to cooperate in all respects with Second Party to the extent needed or desirable in the preparation, signing, filing and prosecution of the application or applications to the Interstate Commerce Commission above referred to, and First Parties further agree to furnish or cause to be furnished without expense to Second Party, all necessary exhibits, data and information, including financial reports, in as many copies and in such form as may be required for the filing of said application or applications.

First Parties further agree that all books, papers and records, both corporate and financial, of the company listed on Exhibit A shall be open to and available for inspection by Second Party and/or by Harry J. Reicher & Company between the date hereof and the closing date as hereinafter fixed, or the cancellation hereof

in the manner hereinafter provided, and First Parties  
242 further agree that during the same period Second Party and/or Harry J. Reicher & Company may make such inspection of the corporate and financial books, papers, records and property of said company as may be desired by Second Party and/or Harry J. Reicher & Company in securing information as to and in verifying the representations, warranties and undertakings contained in this agreement.

Tenth: Second Party agrees to defray all auditing expenses incurred in connection with the work to be done by Harry J. Reicher & Company under paragraph Third hereof, and to pay all expenses incurred in connection with the filing and prosecution of the aforesaid application or applications before the Interstate Commerce Commission, except expenses of officers or employees of the company named on Exhibit A annexed hereto whose testimony may be required or desirable in hearings in connection with this matter before the said Interstate Commerce Commission.

Eleventh: Within sixty days after execution and delivery of this agreement, each of First Parties agrees to deliver to and deposit with the designee provided for herein all of the shares of stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit. The certificates of stock so delivered shall be endorsed in blank or accompanied by stock powers running to Second Party with signatures guaranteed by a

member bank of the Federal Reserve System, or a member of the New York Stock Exchange, and shall be accompanied by the required stock transfer stamps or cash equal to the cost thereof.

243. Within five days after the expiration of said sixty-day period, the designee provided for herein shall report in writing to Second Party the number of shares of stock received by him, from whom received, and any other pertinent information that may be requested by Second Party.

Within ten days after decision by the Interstate Commerce Commission on the application or applications referred to in paragraph Eighth hereof, provided such decision shall constitute approval by the Interstate Commerce Commission as hereinafter defined in paragraph Fifteenth hereof, the designee provided for herein is authorized, empowered, and directed to deliver to Second Party all of the shares of stock deposited with him by First Parties as aforesaid, as well as all of his own shares of stock in the company named on Exhibit A, together with stock powers, signature guarantees, transfer stamps, or cash as provided above.

Twelfth: Simultaneously with the delivery, as provided in paragraph Eleventh hereof, of the shares of stock in the company named on Exhibit A by the designee provided for herein to Second Party, Second Party shall deliver to said designee (who is hereby authorized and empowered to receive said stock for and on behalf of each of First Parties) stock certificates or temporary stock certificates made out to each of First Parties or their nominees for the number of shares of preferred and common stock which each of said First Parties is to receive under paragraphs Third and Fourth hereof, less 15% of the respective amount of shares of each class of stock to be received by each First Party. The 15% of the preferred shares and the 15% of the common shares which Second Party

244 is authorized to withhold as above provided, shall be evidenced by the issuance of separate certificates therefor (to be endorsed in blank by each of the First Parties before delivery to them of the balance of their stock hereunder, or to be accompanied by stock powers duly executed by First Parties and delivered to Second Party before delivery to them of the balance of their stock hereunder), and shall be held by Second Party as security upon the following terms:

(a) If any of the warranties, representations or statements herein made by First Parties are incorrect or untrue and if Second Party should suffer loss thereby; or

(b) If any liabilities, unforeseen at the time of the audit to be made by Harry J. Reicher & Company under paragraph

Third hereof or undisclosed by said audit, should develop and reduce the net worth and/or reduce the net profit for the twelve months' period ending April 30, 1941, of the company named on Exhibit A below that shown on said audit; or

(c) If any contingent liability, for which a reserve is set up either on the books of said company or in the course of said audit by Harry J. Reicher & Company, should become an accrued liability in a greater amount than the sum reserved against it in said audit; or

(d) If the First Parties should fail to perform any of the terms and conditions hereof on their part to be performed and Second Party should suffer loss on account thereof;

Then in any one or more of the events just stated, Second Party shall have the right to sell the shares of stock held as security by it or any part thereof, either at public or private sale, at such price as may be available, upon notice mailed ten days before said sale to each of First Parties at their respective addresses noted at the outset of this agreement, stating the time and place thereof, and apply the net proceeds thereof after deducting the expenses of the sale against the loss sustained by it. Should the net proceeds of any such sale exceed the amount of Second Party's loss, each of First Parties' proportionate share of said excess shall be turned over to him. Second Party shall have the right,

245 so far as consistent with law, to purchase any shares of stock sold pursuant hereto. Second Party shall have the right to withhold the delivery of the shares of stock herein referred to for the purposes enumerated above for a period of three years from the closing date hereof, provided, however, that at any time or from time to time during said period, Second Party on two-thirds' vote of its Board of Directors, may release all or part or parts thereof. At the expiration of three years from the closing date hereof, any of the aforesaid shares of stock remaining in the hands of Second Party (except any that it may have purchased at a sale held pursuant hereto) shall be delivered to each of First Parties in the proportions due them if no claim against which such stock is held as security has been made by Second Party and remains undisposed of at that time; in the event such claim has been made and is undisposed of, Second Party may hold said stock until said claim is finally disposed of.

First Parties shall not be liable in damages for any amount in excess of the stock withheld hereunder by reason of the happening of any of the events set forth in this paragraph Twelfth, but the provisions hereof shall not be deemed to exclude or in any wise impair Second Party's right of rescission for a breach



of this agreement, or for breach of warranty or for misrepresentation.

First Parties may at any time substitute in lieu of the stock held as above provided, a good and sufficient surety company bond in an amount acceptable to Second Party; Second Party shall be the sole judge as to the amount of said bond.

Thirteenth: First Parties hereby jointly and severally appoint and designate H. D. Horton of Charlotte, N. C. (described at various places in this agreement as "designee") as their 246 true and lawful attorney-in-fact, for them and each of them in their respective names, places and steads, with full power and authority to said H. D. Horton to perform such acts and grant or withhold such consents and approvals and do whatever may be required of or permitted to the designee hereunder, as fully and to all intents and purposes as said First Parties jointly or severally might or could do if personally present, hereby ratifying and confirming as binding and conclusive upon them and each of them all that said H. D. Horton shall do or cause to be done by virtue hereof.

The power and authority vested in the above designee shall be irrevocable unless revoked by the unanimous action of First Parties or their respective successors in interest to their stock, communicated to Second Party in writing at least ten days before such revocation shall take effect, and unless such revocation shall be accompanied by the unanimous appointment in writing of a substitute designee by First Parties. In the event of the death, resignation or incapacity of said H. D. Horton, First Parties agree, within ten days of such death, resignation or incapacity, to appoint a substitute designee who shall have all of the powers and authority granted to said H. D. Horton, and to notify Second Party promptly upon such appointment of the identity of such substitute designee. First Parties and each of them agree that the selection of a substitute designee in this contingency may be made by the holders of more than 50% of the stock herein contracted to be sold to Second Party. For the purposes of this paragraph Thirteenth only, in determining the holders of more than 50% of the stock contracted to be sold, all differences between classes and preferences of stock shall be ignored, and each share of stock, regardless of class or preference, shall be counted as one.

If at any time the designee provided for herein shall 247 for any reason be no longer acting as such, and if no substitute shall have been appointed to take his place as provided herein, then any provision contained in any paragraph of this agreement which requires or permits the consent, act or

approval of the designee provided for herein is waived. In any case in which provision is made in this agreement for action by a specified fraction of the total number of the designees under this and the other contracts described in paragraph Fourteenth hereof, such action shall, in any case where a vacancy exists in any of the designations of designees, be sufficient if taken by the specified fraction of the designees actually appointed and capable of acting.

Fourteenth: Second Party agrees that it will not at any time prior to the closing date hereof enter into any agreement for the acquisition of stock or any interest in any company other than those listed below:

Horton Motor Lines, Incorporated.  
Consolidated Motor Lines, Incorporated.  
Barnwell Brothers, Incorporated.  
McCarthy Freight System, Incorporated.  
M. Moran Transportation Lines, Incorporated.  
Southeastern Motor Lines, Incorporated.  
The Transportation, Incorporated.  
Southern New England Terminals, Incorporated.  
Barnwell Warehouse & Brokerage Company.  
Conger Realty Company.  
Brown Equipment and Manufacturing Company.

Second Party further agrees that it will not enter into any agreement for the acquisition of stock or any interest in any of the companies named above without the written consent of the designee provided for here (a) as to the form and substance of any such agreement, and (b) as to the sufficiency of the number of shares of stock represented by the stockholders signing the same.

It is understood and agreed that any agreements to be entered into by Second Party with the stockholders of any of the companies listed above will be entered into simultaneously with the delivery of this contract duly executed by First Parties to Second Party and with the execution hereof by Second Party, and First Parties and each of them jointly and severally authorize and empower the designee provided for herein to decide in his sole discretion whether to deliver this contract duly executed to Second Party and to decide in his sole discretion before delivery hereof (a) whether the form and substance of each of the agreements to be executed simultaneously herewith is satisfactory; (b) whether a sufficient number of shares of stock is represented by the stockholders signing each such agreement; and (c) whether the stockholders of a sufficient number and a satisfactory combination of the companies listed

above are delivering, duly executed, such agreements simultaneously herewith; and this contract shall not be effective for any purpose unless the decision of the designee as to the satisfactory nature of the items above specified is endorsed upon the original hereof which is delivered to Second Party.

Fifteenth: Wherever the expression "closing date" is used herein, it shall be deemed to refer to the tenth day after approval by the Interstate Commerce Commission as such approval is herein defined, or to such later or extended date as may be agreed upon in writing between Second Party and the majority of all designees provided for in the contracts described in paragraph Fourteenth hereof, including the designee provided for herein.

Wherever the expression "approval by the Interstate Commerce Commission" is used in this agreement, it shall be deemed to mean and include a final order by the Interstate Commerce Commission approving: (a) without conditions the acquisition by Second Party of the stock contracted to be purchased by it hereunder and under all agreements with the stockholders of carriers executed simultaneously herewith; or (b) without conditions the acquisition by Second Party of the stock contracted to be purchased by it hereunder and under such agreements as are executed simultaneously herewith with the stockholders of all of the following: 1. Horton Motor Lines, Incorporated; 2. Consolidated Motor Lines, Incorporated; 3. Barnwell Brothers, Incorporated; 4. McCarthy Freight System, Incorporated; 5. M. Moran Transportation Lines, Incorporated; or (c) the stock acquisition referred to in subdivision (a) or (b) hereof, notwithstanding that such approval may be qualified or conditioned upon the consolidation or merger with each other and/or with the Second Party of one or more of the carriers whose stockholders have executed agreements with Second Party simultaneously.

Should the final order of the Interstate Commerce Commission approve the stock acquisition of one or more of the companies referred to in subdivisions (a) or (b) hereof upon conditions other than those set forth in subdivision (c) hereof, or should such final order deny approval of the stock acquisition of one or more of the companies set forth in subdivision (b) but approve the acquisition of the stock covered by this agreement, First Parties agree that the designee provided for herein may, in his sole discretion, decide that such final order may be deemed "approval by the Interstate Commerce Commission" for all purposes of this agreement, notwithstanding such conditions or denial.

Sixteenth: This agreement may be cancelled (a) at any time up to and including the closing date hereof with the written con-

sent of Second Party and a majority of the designees named in all agreements executed and delivered simultaneously herewith for the acquisition of stock by Second Party, including the  
250 designee provided for herein; (b) by the designee provided for herein if approval by the Interstate Commerce Commission is not granted on or before April 1, 1942; notice of cancellation under this subdivision (b), to be effective, shall be mailed to Second Party within twenty days after April 1, 1942; (c) by the designee provided for herein if the Interstate Commerce Commission, before April 1, 1942, enters a final order which does not constitute approval by the Interstate Commerce Commission as defined in paragraph Fifteenth hereof; notice of cancellation under this subdivision (c), to be effective, shall be mailed to Second Party within ten days after such final order.

It is expressly understood and agreed that the cancellation rights herein provided for shall in no wise affect the purchase and sale of the common shares of Second Party provided for in paragraph Fifth hereof, it being intended that the purchase and sale of said shares are subject to no condition whatsoever.

Seventeenth: First Parties agree that at the time for delivery of their stock to the designee as provided in paragraph Eleventh hereof, they will simultaneously therewith deliver to said designee resignations signed by all of the directors of the company named on Exhibit A (except such, if any, as may be, at the time of such deposit, directors of Second Party) to become effective upon the closing date hereof as defined in paragraph Fifteenth hereof, but not otherwise, and said resignations shall be delivered by said designee to Second Party at the same time he delivers the stock as provided in said paragraph Eleventh to Second Party.

Eighteenth: To the extent that the provisions, if any, contained in Exhibit J differ from or are inconsistent with the provisions of the main body of this agreement, the provisions of Exhibit J shall supersede the provisions contained in the main body of this agreement.

251 Nineteenth: Any breach of this agreement by any of First Parties shall be deemed a breach hereof by all First Parties to the extent of entitling Second Party to rescind this agreement or to refuse to perform the same.

Twentieth: It is expressly understood and agreed that except for the purchase and sale of common stock of Second Party provided for in paragraph Fifth hereof, this agreement shall not become effective unless the Commissioner of Internal Revenue of the United States, on or before the closing date hereof, enters into a closing agreement or closing agreements approved by the Secretary, Under-Secretary or an Assistant Secretary of the Treasury in accordance with the Internal Revenue Act and Code

and Regulations, declaring that the transaction contemplated hereby and by the agreements executed simultaneously herewith with Second Party, are or constitute a tax-free reorganization.

In witness whereof, the individual parties have affixed their hands and seals, and the corporate parties have caused these presents to be duly executed under seal, the day and year first above written.

H. D. HORTON, [18]

*First Party.*

MRS. H. D. HORTON, [18]

*First Party.*

By HENRY CLAY HORTON, [18]

*First Party.*

H. D. HORTON, [18]

*Attorney in Fact*

*First Party.*

BENJAMIN STEVENS HORTON, [18]

*First Party.*

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J. A. SUTTON, [18]

*First Party.*

J. D. KLUTTZ, [18]

*First Party.*

C. A. COCHRAN, [18]

*First Party.*

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR, [18]

*President,*

*Second Party.*

Attest:

B. D. RYAN [CORPORATE SEAL]

*Secretary.*

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### EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and non-assessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or



concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

**HORTON MOTOR LINES, INCORPORATED**  
(Name of Company)

**NORTH CAROLINA**  
(State of Incorporation)

Class or classes of stock:	Total number of shares authorized
Preferred, class "A", 8% .....	10,000
Preferred, class "B", 7% (none outstanding) .....	10,000
Common, class "C" .....	50,000
	<u>70,000</u>

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of shares of preferred shares of Second Party to be received	Percentage of total number of shares of common shares of Second Party to be received
H. D. Horton	None	8,688	82	82
Mrs. H. D. Horton	None	636	6	6
Henry Clay Horton	None	636	6	6
Benjamin Stevens Horton	None	636	6	6
J. A. Sutton	None	1		
J. D. Klutts	None	1		
C. A. Cochran	None	1		
J. N. Johnson	None	1		
J. B. Evans	None	1		
J. D. Lawson	None	1		
B. L. Frazier	None	1		
M. B. Speir, Jr.	None	1		
Various	2,666	None		
Total number of shares issued and outstanding	2,666	10,004		

These shares have been endorsed in blank to Mr. H. D. Horton.

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**EXHIBIT B**

First Parties represent and warrant that they have not either individually or collectively any interest, direct or indirect, in any motor, rail or water carrier, whether operating or non-operating, either as directors, officers or stockholders, or by means of a holding or investing company or companies, voting trust or trusts, or in any other manner, other than in Second Party, except as follows:

Exceptions: None.

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## EXHIBIT C

First Parties represent and warrant that the following balance sheet has been prepared in accordance with Interstate Commerce Commission practice and procedure and reflects the financial condition of the company to which it relates including contingent liabilities with substantial correctness. First Parties further represent and warrant that the rates of depreciation employed by the company named below during the past five years are as set forth below. First Parties further represent, warrant and agree that all assets of said company, including but not limited to equipment and real estate, are kept on the books of said company at cost, and that they will be, for the four months' period ending April 30, 1941, kept on the books of said company at cost, and that the depreciation rates employed by said company for the four months' period ending April 30, 1941, will be the same as those set forth below for the year 1940.

## HORTON MOTOR LINES, INCORPORATED

(Name of Company)

	1936	1937	1938	1939	1940
Real estate	3.33%	3.33%	3.33%		
Automotive vehicles	31.40%	31.40%	30.42%	30.72%	25.72%
Trailer vehicles	15.32%	15.32%	16.66%	17.02%	15.32%

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## EXHIBIT C

## HORTON MOTOR LINES, INCORPORATED

Balance Sheet as of Close of Business April 30, 1941

## CURRENT ASSETS

Account No.	Account name	Amount	Amount
1000	Cash		\$43,614.33
1020	Working funds		47,425.00
1040	Special deposits		14,449.56
1060	Notes receivable	\$330.00	
1100	Receivables from associated companies	94,329.28	
1120	Accounts receivable	321,311.94	
	Less: Reserve for uncollectible accounts	16,118.41	
			399,852.81
1140	Subscribers to capital stock		4,955.30
1180	Material and supplies		113,667.18
	Total Current Assets		623,964.18
TANGIBLE PROPERTY			
1200	Carrier operating property	1,927,524.83	
	Less: Reserve for depreciation and amortization	525,698.21	
			1,401,828.62
	Total Tangible Property		1,401,828.62

## Balance Sheet as of Close of Business April 30, 1941—Continued

## CURRENT ASSETS—continued

Account No.	Account name	Amount	Amount
<b>INTANGIBLE PROPERTY</b>			
1500	Organization, franchises and permits.....	\$2,808.11	
	Less: Reserve for amortization.....		\$2,808.11
1550	Other intangible property.....	2,201.00	
	Less: Reserve for amortization.....		2,201.00
	<b>Total Intangible Property.....</b>		<b>5,009.11</b>
<b>INVESTMENT SECURITIES AND ADVANCES</b>			
1650	Other investments and advances.....		
	(a) Pledged.....	17,688.44	17,688.44
	<b>Total Investment Securities and Advances.....</b>		<b>17,688.44</b>
<b>DEFERRED DEBITS</b>			
1800	Prepayments.....		69,978.18
1890	Other deferred debits.....		3,855.95
	<b>Total Deferred Debits.....</b>		<b>73,834.13</b>
	<b>Total Assets.....</b>		<b>2,122,324.48</b>

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## CURRENT LIABILITIES

2000	Notes Payable.....		39,728.42
2030	Payables to Associated Companies.....		183,930.17
2050	Accounts Payable.....		125,726.92
2070	Wages Payable.....		44,289.95
2120	Taxes Accrued.....		44,797.83
2150	Interest Accrued.....		130.00
2190	Other Current Liabilities.....		4,387.86
	<b>Total Current Liabilities.....</b>		<b>442,901.25</b>
<b>RESERVES</b>			
2680	Injuries, Loss, and Damage Reserves.....		11,929.51
2690	Other Reserves.....		152,634.64
	<b>Total Reserves.....</b>		<b>164,564.15</b>
<b>CAPITAL STOCK</b>			
2700	Preferred Capital Stock.....	53,320.00	
	Nominally Issued.....		53,320.00
2710	Common Capital Stock.....	212,080.00	
	Nominally Issued.....		212,080.00
2720	Premiums and Assessments on Capital Stock.....		10,000.00
2730	Capital Stock Subscribed.....		5,520.00
	<b>Total Capital Stock.....</b>		<b>280,920.00</b>
<b>UNAPPROPRIATED SURPLUS</b>			
2900	Unearned Surplus.....		
2950	Earned Surplus.....		1,233,849.08
	<b>Total Unappropriated Surplus.....</b>		<b>1,233,849.08</b>
	<b>Total Liabilities.....</b>		<b>2,122,324.48</b>

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## EXHIBIT D

First Parties represent and warrant that the following is a true and accurate statement of the operating revenues and profit and loss of the company named on Exhibit A annexed hereto for the year ending April 30, 1941, as per the books of said company, and has been prepared in accordance with Interstate Commerce Commission practice and procedure:

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## EXHIBIT D

## HORTON MOTOR LINES, INCORPORATED

## Income Statement, Year Ended April 30, 1941

Account No.	Name of Account	Amount
<b>I. CARRIER OPERATING INCOME</b>		
3000	Revenues: Operating Revenues.....	\$4,716,637.83
Expenses:		
4000	Operation and Maintenance Expenses.....	3,362,906.44
5000	Depreciation Expense.....	249,987.72
5200	Operating Taxes and Licenses.....	424,857.54
5300	Operating Rents—Net.....	157,338.68
	Total Expenses.....	4,195,090.38
	Net Operating Revenue.....	521,547.45
5500	Income from Lease of Carrier Property, Credit.....	119.89
	Net Carrier Operating Income.....	119.89
<b>II. OTHER INCOME</b>		
6200	Interest Income.....	895.70
6300	Other Nonoperating Income.....	652.02
	Total Other Income.....	1,557.72
	Gross Income.....	523,225.06
<b>III. INCOME DEDUCTIONS</b>		
7100	Other Interest Deductions.....	1,965.07
7300	Other Deductions.....	16,134.32
	Total Income Deductions.....	18,099.39
	Net Income Before Income Taxes.....	505,125.67
8000	Provision for Income Taxes.....	141,435.19
	Net Income (or loss) Transferred to Earned Surplus.....	363,690.48

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## HORTON MOTOR LINES, INCORPORATED

## Schedule of Leases—April 30, 1941

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MCLEAN TRUCKING CO., INC., ET AL.

Location	Street address	Lessor	Address of lessor	Monthly rental	Date of expiration
New York, N. Y.	623 Washington St.	Hoffman Estate	258 Broadway, N. Y. C.	\$1,933.33	1-31-47
Philadelphia, Pa.	1701 N. Delsware Ave.	Conger Realty Co.	Charlotte, N. C.	1,800.00	10-15-44
Baltimore, Md.	2101 Washington Blvd.	Conger Realty Co.	Charlotte, N. C.	1,900.00	8-31-43
Pittsburgh, Pa.	219 Duquesne St., Northside	Conger Realty Co.	Charlotte, N. C.	1,900.00	8-12-43
Pittsburgh, Pa.	206-8-10 W. General Robinson St.	Wilmerding Corp. of Pa.	Wilmerding, Pa.	10.00	Month to month
Wilkes-Barre, Pa.	121-131 Welles St.	Matherson Wine Co.	Wilkes-Barre, Pa.	300.00	11-18-42
Washington, D. C.	701 I St. SW	Clarence & Jas. W. Springman	Washington, D. C.	100.00	8-31-41
Richmond, Va.	2403 5-7 N. Lombardy St.	Carrie L. Walker	Richmond, Va.	315.00	12-14-42
Greensboro, N. C.	2110 High Point Rd.	McDaniel Lewis et al	Greensboro, N. C.	310.00	Month to month
Charlotte, N. C.	1001-31 S. Clarkson St.	Conger Realty Co.	Charlotte, N. C.	2,500.00	8-31-43
Charlotte, N. C.	1004-18 S. Clarkson St.	Conger Realty Co.	Charlotte, N. C.	750.00	1-1-45
Greenville, S. C.	741 W. Washington St.	J. P. Thompson et al	Greenville, S. C.	460.00	4-25-42
Hickory, N. C.	8th Avenue	Harper Motor Co.	Hickory, N. C.	50.00	Month to month
Shelby, N. C.	415 S. Morgan St.	W. G. Arcey	Shelby, N. C.	50.00	Month to month
Atlanta, Ga.	172 Howell St. N. E.	Conger Realty Co.	Charlotte, N. C.	1,400.00	8-30-44
Rome, Ga.	1424 N. Broad St.	O. D. Minge	Rome, Ga.	75.00	8-31-41
Avalon, N. J.		L. W. Schiller Realty Company	North Amboy, N. J.	125.00	2-15-43

1 Remarks: Option of renewal for additional 5 years on same terms.

2 Remarks: Option of renewal for additional 5 years on same terms.

3 Remarks: Option of renewal for additional 5 years on same terms.

4 Remarks: Option of renewal for 5 years on same terms.

5 Remarks: Option of renewal for 5 years on same terms.

6 Remarks: Lease is automatically renewed for 1 year at a time in absence of 90 days' written notice.

7 Remarks: Option to renew for 5 years on same terms.



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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

## HORTON MOTOR LINES, INCORPORATED

1. Employment contract with S. W. Shelton, Richmond, Virginia, for \$5,400.00 per annum. A year's notice is necessary to cancel so that Contract is in force a year from any date cancellation may be made. Mr. Shelton represents Horton Motor Lines, Incorporated, in capacity of Public Relations Counsel.

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## EXHIBIT G

First Parties represent and warrant that the following is an accurate and complete statement of the insurance coverage of each kind that exists with respect to the company named on Exhibit A annexed hereto as of the date of this agreement, showing the amount and kind of coverage, the names of the insurance companies, expiration dates of insurance policies and premiums thereon.

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## HORTON MOTOR LINES, INCORPORATED

## Insurance Schedule—April 30, 1941

Insurance company	Type of coverage	Amount of coverage	Expiration date	Original premium
Equitable	Fire, etc	\$7,500.00	10-21-41	\$125.62
Aetna	Fire, etc	\$10,000.00	10-21-41	167.50
Equitable	Fire, etc	\$100,000.00	1-1-42	87.00
Dixie	Fire, etc	\$15,000.00	2-15-42	66.00
Hartford	Fire, etc	\$10,000.00	3-6-42	44.00
Equitable	Fire, etc	\$2,000.00	8-9-41	8.00
Phoenix	Fire, etc	\$2,000.00	8-9-41	93.00
Equitable	Fire, etc	\$320,000.00	1-1-42	740.00
Equitable	Fire, etc	\$375,000.00	1-1-42	600.00
Hartford	Fire, etc	\$32,500.00	11-7-41	358.48

## Insurance Schedule—April 30, 1941—Continued

Insurance company	Type of coverage	Amount of coverage	Expiration date	Original premium
Hartford	Auto Fleet	\$1,256,000.00	9-1-41	\$13,187.67
265 Maryland Casualty	P. L. & P. D.	25/50/5	1-26-42	31.48
Maryland Casualty	P. L. & P. D.	25/50/5	1-16-42	15.36
Maryland Casualty	P. L. & P. D.	25/50/5	2-3-42	18.06
Maryland Casualty	P. L. & P. D.	10/20/5	2-27-42	13.06
Maryland Casualty	P. L. & P. D.	25/50/5	4-13-42	14.18
Maryland Casualty	P. L. & P. D.	10/20/5	5-1-41	11.48
Maryland Casualty	P. L. & P. D.	50/100/5	7-27-41	14.98
Maryland Casualty	P. L. & P. D.	25/50/5	3-28-42	33.30
Maryland Casualty	P. L. & P. D.	10/20/5	6-3-41	13.06
Maryland Casualty	P. L. & P. D.	25/50/5	6-1-41	16.12
Maryland Casualty	P. L. & P. D.	25/50/5	6-1-41	14.16
U. S. Casualty	Public Liability	25/50	6-18-41	71.10
Maryland Casualty	P. L. & P. D.	25/50/5	7-13-41	14.18
Maryland Casualty	P. L. & P. D.	25/50/5	8-17-41	18.06
Maryland Casualty	P. L. & P. D.	25/50/5	8-22-41	12.49
Maryland Casualty	P. L. & P. D.	25/50/5	8-7-41	15.36
Maryland Casualty	P. L. & P. D.	10/20/5	8-23-41	11.53
266 Maryland Casualty	P. L. & P. D.	10/20/5	8-1-41	14.16
Maryland Casualty	P. L. & P. D.	50/100/5	9-1-41	11.21
Maryland Casualty	P. L. & P. D.	10/20/5	9-12-41	14.16
Maryland Casualty	P. L. & P. D.	10/20/5	9-7-41	13.06
Amer. Fidel. & Cas.	P. L. & P. D.	25/50/5	9-1-41	490.93
Maryland Casualty	P. L. & P. D.	25/50/5	9-26-41	18.06
Mary and Casualty	P. L. & P. D.	25/50/5	10-8-41	15.36
Maryland Casualty	P. L. & P. D.	25/50/5	9-1-41	752.57
Maryland Casualty	P. L. & P. D.	25/50/5	12-31-41	18.06
Maryland Casualty	P. L. & P. D.	25/50/5	12-31-41	28.47
Market Service, Inc.	P. L. & P. D.	25/50	None	
Excess Insur. Co. of Amer.	P. L. & P. D.	50/100/5	9-1-41	538.36
267 Maryland Casualty	Spkr. Leakage	\$25,000.00	9-1-41	252.74
Equitable	Spkr. Leakage	\$25,000.00	9-1-41	253.83
Continental	Boiler	\$20,000.00	2-9-43	790.90
Maryland Casualty	Spkr. Leakage	\$25,000.00	1-1-44	187.50
Equitable	Elevator	25/50	3-10-42	10.00
Maryland Casualty	Forgery Bond	\$15,000.00	3-10-43	172.78
Maryland Casualty	Paymaster Robbery	\$37,497.00	4-1-42	173.73
Maryland Casualty	Safe Burglary	\$23,555.00	4-1-42	274.08
Maryland Casualty	Mess. & Int. Rep.	\$41,666.00	4-1-42	190.93
Equitable	Spkr. Leakage	\$30,000.00	5-4-41	125.30
Equitable	Water Damage	\$50,000.00	7-12-41	500.00
Equitable	Spkr. Leakage	\$135,000.00	8-12-41	675.82
Maryland Casualty	Carriers Bond	\$25,000.00	8-28-41	125.00
Maryland Casualty	Burglary	\$100,000.00	4-1-42	374.00
U. S. Casualty	Trans. Bond	\$1,000.00	9-25-44	10.00
268 F. & D. of Md.	Trans. Bond	\$1,000.00	9-22-41	20.00
Maryland Casualty	Fidelity Bond	\$298,500.00	9-1-41	840.51
Maryland Casualty	Elevator	25/50	9-1-41	42.18
Hartford	Spkr. Leakage	\$2,800.00	9-1-42	5.29
Maryland Casualty	Trans. Bond	\$5,000.00	7-19-41	50.00
269 Gen'l. Reinsurance Company	Excess Wkmen's Comp	State requirement	9-1-41	1,407.00
State of Ohio	Wkmen's Comp	State requirement	10-4-41	7.15
Maryland Casualty	Wkmen's Comp	State requirement	9-1-41	Monthly
270 Alliance	Excess Transit Floater	\$10,000.00	3-29-42	75.00
Globe & Rutgers	Excess Transit Floater	\$10,000.00	7-29-42	75.00
Equitable	Legal Liability	\$10,000.00	7-1-41	350.00
Equitable	Cargo, L. & D.	\$42,500.00	None	
271 Jefferson Standard Life Insurance Co. <sup>1</sup>	Life of President	\$250,000.00		1,468.00
Jefferson Standard Life Insurance Co.	Life of Vice-Pres.	\$30,000.00		2,039.00
Jefferson Standard Life Insurance Co.	Life of Sec.-Treas.	\$30,000.00		1,810.00
Mutual Life Insur. Company of N. Y.	Life of President	\$30,000.00		2,079.00
Life Insurance Co. of Virginia	Life of Vice-Pres.	\$30,000.00		657.00
Life Insurance Co. of Virginia	Life of Insur. Mgr.	\$30,000.00		1,462.00

<sup>1</sup> Premiums on these policies are paid in monthly installments based on a rate of .0036 and .000559 per mile traveled by revenue equipment per month.

<sup>2</sup> Premiums on this policy are paid in monthly installments based on a rate of 2 1/2¢ per \$100.00 of Gross Revenue. Deductibles: \$10,000.00 loss on vehicles; \$2,500.00 loss on hired vehicles; \$2,500.00 loss in terminals.

<sup>3</sup> Premiums shown on this coverage are on quarterly basis, whereas others are on annual basis.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises or privileges null and void.

Mrs. J. Sanford, \$350.00.

All Claims and demands not listed are covered by insurance.

There is on file a protest as to the operating rights of the company between Baltimore and Pittsburgh.

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## EXHIBIT I

First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Non-recurring items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$48,235.00 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$48,235.00.

## Nonrecurring Items:

1. Bonuses .....	\$6,000.00
2. Extraordinary legal fees .....	4,235.00
3. Salary to H. D. Horton .....	38,000.00

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## EXHIBIT J

First Parties represent and warrant that there is a class of preferred stock of the company named on Exhibit A annexed hereto called "Employees 8% Preferred Stock", and that of a total of 10,000 shares of such class authorized, there are presently issued and outstanding 2,666 shares having a par value of \$20.00 each.

Notwithstanding the provisions of paragraph Sixth, it is agreed that the continued payment of dividends on this stock shall not operate to decrease the net worth of the company, and it is further agreed that the said company may continue the issuance of the Employees Preferred Stock in accordance with its present practice and routine; and First Parties represent, warrant and agree that any stock so issued shall, along with all of said stock heretofore issued, be called and redeemed on or before the closing date as defined in the main agreement.

First Parties further represent and warrant that the balance sheet of April 30, 1941, to be delivered to Harry J. Reicher & Company under the provisions of paragraph Third of the annexed contract will be adjusted to reflect the situation which would have resulted if all of the issued and outstanding preferred stock above described had been called and the redemption price thereof had been paid prior to April 30, 1941.

First Parties represent, warrant and agree that the shares of common stock of the company named on Exhibit A presently held by the American Trust Company, as Trustee, and included in the number of shares set forth in Column 3 on Exhibit A next to the name H. D. Horton, will be delivered to Second Party on demand hereafter, or, in any event, before the closing date as defined in the main agreement, it being understood and agreed that the said trust agreement, under which said stock is now held, will in the meantime be revoked in full and it is also agreed that the policies of life insurance upon the life of H. D. Horton, held by the said American Trust Company, as Trustee, in connection with the trust agreement, under which said common shares of stock are held, will be transferred and assigned to H. D. Horton and that as a consideration therefor he will pay over to Horton Motor Lines, Incorporated, a sum equivalent to the asset value thereof, as shown on the books of said company; the policies of insurance referred to being Numbers 521417, 521418, and 521419 and executed by the Jefferson Standard Life Insurance Company.

H. D. Horton represents that he is the beneficial owner and presently the holder of the shares of stock listed on Exhibit A under the name of B. L. Frazier, J. D. Lawson, M. B. Speir, Jr., J. N. Johnson, and J. B. Evans.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part".

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

275 It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

276 **HORTON MOTOR LINES, INCORPORATED**

The undersigned hereby certify:

(1) That the undersigned have examined contracts delivered simultaneously herewith between Associated Transport, Inc. and stockholders of the following companies:

Horton Motor Lines, Incorporated,

Consolidated Motor Lines, Incorporated,

Barnwell Brothers, Incorporated,

McCarthy Freight System, Inc.,

M. Moran Transportation Lines, Inc.,

Southeastern Motor Lines, Incorporated,

The Transportation, Inc.,

Southern New England Terminals, Inc.,

Barnwell Warehouse & Brokerage Company,

Conger Realty Company,

Brown Equipment and Manufacturing Company;

(2) That the form and substance of the within agreement (being one of the agreements referred to in paragraph (1) hereof), and of each of the other aforesaid agreements are satisfactory;

(3) That in the opinion of each of the undersigned a sufficient number of shares of stock is represented by the stockholders signing each such agreement;

(4) That this agreement and the other aforesaid agreements have been executed and delivered by stockholders of a sufficient number of and a satisfactory combination of the companies listed in paragraph Fourteenth of the annexed agreement.

Dated: June 11th, 1941.

H. D. HORTON,

EVERETT J. ARBOUR,

R. W. BARNWELL,

VIRGIL R. GOODE,

CLIFFORD C. BROCK,

A. S. CLAY,

JOHN J. MCCARTHY,

MORTIMER ALLEN SULLIVAN.

277 Agreement made this                      day of 1941, between the parties who may sign this agreement as First Parties, hereinafter referred to as the "First Parties," Associated Transport, Inc., a Delaware corporation, hereinafter referred to as the "Second Party," and Burge M. Seymour, hereinafter referred to as the "Third Party," witnesseth:



The First Parties are about to purchase from the Second Party certain shares of the common stock of the Second Party, at a price of \$1 a share payable in cash, pursuant to paragraphs designated "Fifth" of certain contracts entered into by certain of the First Parties respectively (with or without other parties) and the Second Party; and the Third Party is about to purchase from the Second Party certain shares of its common stock at a price of \$1 per share on terms to be agreed upon between the Second Party and the Third Party.

It is desired to restrict for a reasonable period of time the transfer by the First and Third Parties of the stock so to be acquired by them respectively.

Now, therefore, in consideration of the mutual promises of the parties hereinafter contained, it is agreed:

First: Each of the First Parties, and the Third Party, each for himself, agrees that he will not for a period of thirty months from the date of this agreement sell, transfer, assign, encumber or otherwise dispose of the stock to be acquired by him from the Second Party as aforesaid, except as herein-after expressly permitted.

Second: Notwithstanding the provisions of paragraph "First" of this agreement, any of the First Parties may transfer any part or all of the stock so acquired by him, subject to the following limitations:

A. Any such transfer may be made only to one or more officers or employees of the corporation named in Schedule A of the agreement with the Second Party to which the First Party making the transfer is a party.

B. No such transfer may be made for any consideration greater than \$1 a share.

C. Any such transfer must be made and shall be accepted subject to the restrictions of this agreement, so that the transferee shall be subject to the same restrictions under this agreement as if the transfer had not been made and, in addition, to the restriction stated in subdivision "D" of this paragraph "Second."

D. With regard to each share of stock, only a single transfer shall be permitted under the provisions of this paragraph "Second"; so that when one transfer of any stock shall have been made under this paragraph "Second," no further transfer of the same stock shall be permitted thereunder.

Third: All of the stock hereinbefore referred to, issued to the First and Third Parties, shall bear an endorsement referring to this agreement, and stating in substance that the transfer of the stock is restricted in accordance with the terms

thereof and may validly be made only in accordance with said terms.

Fifth This agreement may be signed in several counterparts, which shall be deemed one instrument.

In witness whereof, the individual parties have affixed their hands and seals, and the corporate parties have caused these presents to be duly executed under seal, the day and year first above written.

H. D. HORTON, [LS]  
HENRY CLAY HORTON, [LS]  
By H. D. HORTON, [LS]

*Attorney in Fact*

MRS. H. D. HORTON, [LS]  
BENJAMIN STEVENS HORTON, [LS]

*First Parties.*

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR, [LS]

*President,*

*Second Party.*

Attest:

A. D. RYAN,

*Secretary.*

B. M. SEYMOUR, [LS]

Burge M. Seymour,

*Third Party.*

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EXHIBIT BMC-45-C-1A

Agreement made this 11th day of June 1941, between H. D. Horton, Charlotte, N. C.; R. G. Conger, Charlotte, N. C.; C. P. Roberson, Charlotte, N. C.; hereinafter referred to as "First Parties," and Associated Transport, Inc., a Delaware corporation, hereinafter referred to as "Second Party," witnesseth:

Substantial economies and increased efficiency can be accomplished by combining the ownership and control of the stock and/or assets of certain motor carriers of freight now operating along the Atlantic seaboard, and said combined ownership and control would result in improved motor freight movement favorably affecting the shipping public, would promote safe and sound economic conditions in transportation and would aid and contribute to the progress of the national defense program.

Such combined ownership and control is a joint enterprise to carry out a plan of reorganization, and Second Party is prepared to act as the agency for accomplishing said combination of ownership and control and said plan of reorganization;

282     The First Parties or some of them, or with others, have this day executed an agreement for the sale of all of the capital stock of Horton Motor Lines, Incorporated, said agreement being hereinafter referred to as the main agreement.

Now, therefore, in consideration of the mutual promises of the parties hereinafter contained, it is agreed:

First: The representations and warranties made by First Parties on Exhibits A to J hereto annexed are made part of this agreement and incorporated herein by reference.

First Parties represent and warrant that the books and records of the company named on Exhibit A hereto annexed, truthfully, accurately, and completely contain all of the information necessary to disclose the correct financial condition of said company as of April 30, 1941, and to disclose the correct net profits of said company for the twelve months' period ending April 30, 1941.

Second: Second Party represents and warrants (1) that it has no interest, direct or indirect, in any motor, rail, or water carrier whether operating or nonoperating, either as a stockholder or by means of a holding or investment company or companies, voting trust or trusts, or in any other manner, other than that which results from the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth of the main agreement; (2) that it has no subsidiaries or affiliates and has incurred no liabilities of any nature, except for compensation for services, for expenses in connection with its organization, for legal fees in connection with the preparation of this agreement and the agreements which are to be executed simultaneously herewith as provided in paragraph Fourteenth of the main agreement, and for the effectuation or attempted effectuation of the purposes thereof; (3) that Second Party is a validly organized Delaware corporation, that its directors at this time are H. R. Horton, and B. M. Seymour, and its officers are:

283     Chairman of the Board, H. D. Horton; President, Burge M. Seymour; Vice President, Office vacant; Secretary, B. D. Ryan; Treasurer, Burge M. Seymour; that the only issued and outstanding stock of Second Party is 1,000 shares of common stock owned on the books of Second Party by H. D. Horton, and that said shares of stock are fully paid; (4) that the charter of Second Party and the amendments thereto are as filed in the office of the Secretary of State of Delaware, that no amendments to said charter have been filed subsequent to May 26, 1941, and that the authorized stock, the classes, preferences and rights thereof are as set forth in said charter and amendments; (5) that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of the authorized and unis-

sued stock of Second Party, except such agreements as are to be executed simultaneously herewith as provided in paragraph Fourteenth of the main agreement.

Third: Each of the First Parties agrees to exchange all of the issued and outstanding capital stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit, for the 6% cumulative convertible \$100 par value preferred stock, and for the \$1 par value common stock of Second  
284 Party (all of the said stock of Second Party to be fully paid and non-assessable, free and clear of any and all liens and encumbrances whatsoever), the number of each class of said shares which First Parties collectively shall receive, to be arrived at as follows:

(1) The number of preferred shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of preferred shares equal to four-fifths of the net worth, as determined in the manner hereinafter provided, of the company named on Exhibit A annexed hereto as at April 30, 1941.

(2) The number of common shares to be received by First Parties shall be such as to give said First Parties collectively a total par value of common shares to be arrived at by deducting from the net profits, determined in the manner hereinafter provided, of the company named on Exhibit A for the twelve months ending April 30, 1941, a sum equal to 6% of the par value of the preferred shares to be received by First Parties collectively under subdivision (1) of this paragraph Third, and by dividing the remainder by 2.

First Parties agree to furnish to Harry J. Reicher & Company, certified public accountants of the State of New York, with offices in New York City, no later than May 31, 1941, a balance sheet of the company named on Exhibit A as of April 30, 1941, and an operating statement of said company for the twelve months' period ending April 30, 1941.

Net worth, for the purposes of subdivision (1) of this paragraph Third, and net profits for the purposes of subdivision (2) hereof, shall be determined as follows: The net worth and net profits of said company as shown on the above mentioned balance sheet and operating statement shall be adjusted without consolidation by Harry J. Reicher of Harry J. Reicher & Company in the following items and respects:

285 (a) All values for good-will, franchises, costs of acquiring franchises, organization expenses, and such deferred expenses as are not in his opinion apportionable on an accurate mathematical basis, shall be eliminated and disregarded.

(b) Real estate shall be taken at cost less depreciation at the rate specified below.

(c) Provision shall be made for taxes for the twelve months' period ending April 30, 1941, on the basis of 1940 rates.

(d) An inventory of tires on equipment shall be taken at the beginning and end of the twelve months' period ending April 30, 1941, and computed at 50% of cost.

(e) The reserve for uncollectible accounts receivable shall be 5% of such accounts, or the average actual annual loss of said company on such accounts for the three years ending December 31, 1940, whichever is greater, and said reserve shall be established both at the beginning and end of said twelve months' period.

(f) The following annual depreciation rates shall be applied to the types of assets enumerated below:

(i) Furniture, fixtures, and other equipment, 8%.

(ii) Brick or concrete buildings owned in fee, 2%.

(iii) Leasehold improvements, excluding buildings—Rate to be determined by the term of the lease not taking into account any options for renewal.

(iv) Buildings constructed on leased property—Rate to be determined by the term of the lease, taking options for renewal, if any, into consideration, but in no event lower than the rate provided in subdivisions (ii) or (v) hereof.

(v) Other buildings—Fair rate to be fixed in his discretion within the limits, if any, set by the Treasury Department.

286 (vi) Trucks—none.

(vii) Trailers—None.

(viii) Tractors—None.

(ix) Passenger cars—33 $\frac{1}{3}$ %.

(x) Service cars—25%.

Depreciation with respect to any of the items from (vi) to (x) hereof inclusive, shall cease when 95% of the cost of any said item has been depreciated.

(g) Any net profits or losses arising out of entries made by the company named on Exhibit A during the twelve months' period ending April 30, 1941, adjusting assets or liabilities or inventories on parts, tires, supplies, stationery, gas and oil, shall be charged or credited directly to surplus, unless the amount allocable to said twelve months' period can be determined. If the amount allocable to said twelve months' period can be determined it shall be treated as a profit or loss for said twelve months.

(h) If any item for rebuilding or maintenance of revenue equipment has been capitalized by the company named on Exhibit A while the book value of said equipment is more than 20% of its original cost, the amount so capitalized shall be eliminated, except that any expenditures for completion of ve-



hicles made during the first sixty days of ownership may be capitalized.

(i) Such adjustment, as in his opinion may seem proper, shall be made by him in any respect where a principle or method of accounting has been used or applied by said company which is not, in his opinion, in accord with sound accounting principles or methods, except that nothing herein contained shall authorize adjustments inconsistent with or different from those provided in items (a) to (h) hereof inclusive where those items are applicable, nor authorize any adjustment in connection with any compensation for services item.

(j) To correct any inaccuracies or discrepancies whatsoever.

In all cases where reserves are set up or adjusted, the rate or method applied at April 30, 1941, shall likewise be applied at May 1, 1940, to determine the correct allocation of profits or losses between the said twelve months' period and prior periods.

287 It is expressly understood and agreed that for the purpose of determining the number of shares of preferred stock to be received by First Parties collectively, the following method shall be followed: Harry J. Reicher shall first determine the net worth of the company named on Exhibit A as adjusted in all respects described in subdivisions (a) to (e) and (g) to (j) hereof all inclusive. He shall then determine whether the adjustments provided for in subdivision (f) result in a net increase or net decrease in value of the items affected thereby.

If the adjustments under subdivision (f) result in a net increase in said values, the amount of said increase shall not entitle First Parties to any shares of preferred stock therefor, but they shall receive therefor a total par value of common shares equal to 5% or four-fifths of the amount of said increase.

If the adjustments under subdivision (f) result in a net decrease in said value, the amount of said decrease shall be deducted from the net worth of said company as adjusted in all respects described in subdivision (a) to (e) and (g) to (j) hereof all inclusive.

It is further understood and agreed that all determinations by Harry J. Reicher under the provisions of this paragraph Third, shall be binding and conclusive on all parties hereto, unless within fifteen days after mailing of said determinations by Harry J. Reicher to the designee provided for in the main agreement, said designee shall mail to all of the designees under the contracts described in paragraph Fourteenth of the main agreement, at the addresses set forth in their respective contracts, notice that he

288 disputes said determinations, or any of them, with a statement of his reasons therefor, and unless two-thirds of all said designees, including the one provided for in the main

agreement, shall revise the determinations, or any of them, made by Harry J. Reicher and mail notice of their action to the designee provided for in the main agreement. Should at least two-thirds of said designees fail to meet, hear and reach a vote upon such disputed determinations within fifteen days after such notice of dispute is mailed to them, performance of this agreement shall, upon the written election of First Parties, be suspended until at least two-thirds of said designees shall have met, heard the dispute with regard to such determinations and reached a vote thereon; but all determinations by Harry J. Reicher shall remain in force unless upon such vote it is revised by the vote of two-thirds of all said designees, including the one provided for in the main agreement. If such determinations, or any of them, are revised by two-thirds of said designees, such revision shall, insofar as it affects and with respect to the items so affected, supersede his determinations and shall be final, binding and conclusive on all parties, unless within ten days after such revision, the designee provided for in the main agreement shall elect to accept the original determinations by Harry J. Reicher, in which event said original determinations shall be final, binding and conclusive on all parties.

Fourth: It is agreed that each of First Parties or their respective nominees shall receive that percentage of the total number of shares of each class of stock of Second Party to be received by all of the First Parties to this agreement collectively, which is shown opposite his name in columns 4 and 5 on Exhibit A. In determining the amount of common or preferred stock to be received by First Parties either collectively or by any of them, a fractional share of one-half or over shall entitle such First Parties to a full share, and a fractional share of less than one-half is hereby waived by each of said First Parties.

289 Fifth: For the purpose of providing for obligations incurred or to be incurred by Second Party in connection with bringing about or attempting to bring about the combined ownership and control and reorganization contemplated hereby, each of the First Parties agrees to purchase or cause to be purchased at par, that percentage of 862 shares of the common stock of Second Party which is set forth next to his name in column 5 on Exhibit A, such stock to be paid for in cash at the time of the execution hereof. Second Party agrees to sell said shares of stock to First Parties, and agrees that such shares shall be nonassessable and free and clear of all liens and encumbrances.

Sixth: First Parties warrant and agree that between April 30, 1941, and the closing date as hereinafter fixed, or the time of cancellation of this agreement in the manner hereinafter provided:

(1) No equipment or other assets of the company named on Exhibit A hereof has been or will be sold, exchanged, or otherwise disposed of, except in the ordinary course of business, and the equipment, assets, and facilities of said companies have been and will be maintained continuously during said period in accordance with existing standards of maintenance.

(2) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will purchase, lease, or build, or make any commitment to purchase, lease, or build, any property except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets, and said company has not and will not incur any expenses or liabilities except in the ordinary course of business and for a reasonable consideration in the light of prevailing markets.

(3) No stockholder or officer of the company named on Exhibit A has received or shall receive any greater compensation or expense allowance (as distinguished from actual expenses) than the total of his compensation and expense allowance for the twelve months' period ending April 30, 1941, prorated in accordance with the time elapsed between April 30, 1941, and the closing date hereof, or the cancellation hereof, in the manner hereinafter provided. No compensation or expense allowance agreement extending beyond the closing date hereof has been or will be made with any stockholder, officer, or executive employee of said company.

(4) Insurance coverage in at least the amount and kind set forth on Exhibit G annexed hereto, will be continuously maintained in force and effect.

(5) Neither the company named on Exhibit A, nor First Parties acting or purporting to act on its behalf, has or will acquire any interest, direct or indirect, in any motor carrier or any rail or water carrier, except the company named on Exhibit A of the main agreement.

(6) The company named on Exhibit A has not and will not authorize the creation of any bonded indebtedness, secured or unsecured.

(7) Any sale, hypothecation, or transfer by any of First Parties of his stock in the company named on Exhibit A shall be expressly subject to all the terms, conditions, and provisions of this agreement.

(8) There have been and will be no changes in the charter or bylaws of the company set forth on Exhibit A.

(9) No stock shown on Exhibit A to be authorized but unissued shall be issued.

(10) No dividends have been or will be declared or paid by the company named on Exhibit A.

(11) No distribution from assets will be made by the company named on Exhibit A except in the usual course of business and except as expressly authorized by this contract.

It is understood and agreed that on or after June 1, 1941, any one or all of the provisions contained in this paragraph Sixth may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth of the main agreement including the designee provided for in the main agreement.

Seventh: Second Party warrants and agrees that it will not, prior to the closing date as hereinafter fixed or the time of cancellation of this agreement in the manner hereinafter provided:

291 (a) Amend or modify its charter or bylaws.

(b) Consolidate or merge with any other company, or sell, lease, or mortgage all or substantially all of its assets.

(c) Create any bonded indebtedness, secured or unsecured.

(d) Create or issue any different class of stock than those described in this agreement.

(e) Issue any shares of any of the authorized classes of its stock in addition to those already issued and those which may be issued pursuant to paragraphs Third and Fifth of this agreement, and pursuant to the main agreement, and pursuant to the corresponding paragraphs of the agreements which are to be executed simultaneously therewith as provided in paragraph Fourteenth thereof.

It is understood and agreed that any one or all of the provisions contained in this paragraph Seventh may be modified by written agreement between Second Party and two-thirds of all designees provided for in the contracts described in paragraph Fourteenth of the main agreement including the designee provided for in the main agreement.

Eighth: First Parties further agree that all books, papers, and records, both corporate and financial, of the company listed on Exhibit A shall be open to and available for inspection by Second Party and/or by Harry J. Reicher & Company between the date hereof and the closing date as hereinafter fixed, or the cancellation hereof in the manner hereinafter provided, and First Parties further agree that during the same period Second Party and/or Harry J. Reicher & Company may make such inspection of the corporate and financial books, papers, records and property of said company as may be desired by Second Party and/or Harry J. Reicher & Company in securing information as to and in



verifying the representations, warranties, and undertakings contained in this agreement.

292 Ninth: Second Party agrees to defray all auditing expenses incurred in connection with the work to be done by Harry J. Reicher & Company, under paragraph Third hereof.

Tenth: Within sixty days after execution and delivery of this agreement, each of First Parties agrees to deliver to and deposit with the designee provided for in the main agreement all of the shares of stock shown on Exhibit A annexed hereto to be owned by him in the company named on said Exhibit. The certificates of stock so delivered shall be endorsed in blank or accompanied by stock powers running to Second Party with signatures guaranteed by a member bank of the Federal Reserve System, or a member of the New York Stock Exchange, and shall be accompanied by the required stock transfer stamps or cash equal to the cost thereof.

Within five days after the expiration of said sixty-day period, the designee provided for in the main agreement shall report in writing to Second Party the number of shares of stock received by him, from whom received, and any other pertinent information that may be requested by Second Party.

Simultaneously with the delivery by said designee of shares of stock to the Second Party as provided in Paragraph Eleventh of the main agreement, said designee is authorized, empowered, and directed to deliver to Second Party all of the shares of stock deposited with him by First Parties hereunder, as well as all of his own shares of stock in the company named on Exhibit A annexed hereto, together with stock powers, signature guarantees, transfer stamps or cash as provided above.

293 Eleventh: Simultaneously with the delivery, as provided in paragraph Tenth hereof, of the shares of stock in the company named on Exhibit A by the said designee to Second Party, Second Party shall deliver to said designee (who is hereby authorized and empowered to receive said stock for and on behalf of each of First Parties) stock certificates or temporary stock certificates made out to each of First Parties or their nominees for the number of shares of preferred and common stock which each of said First Parties is to receive under paragraphs Third and Fourth hereof, less 15% of the respective amount of shares of each class of stock to be received by each First Party. The 15% of the preferred shares and the 15% of the common shares which Second Party is authorized to withhold as above provided, shall be evidenced by the issuance of separate certificates therefor (to be endorsed in blank by each of the First Parties before delivery to them of the balance of their



stock hereunder; or to be accompanied by stock powers duly executed by First Parties and delivered to Second Party, before delivery to them of the balance of their stock hereunder), and shall be held by Second Party as security upon the following terms:

(a) If any of the warranties, representations or statements herein made by First Parties are incorrect or untrue and if Second Party should suffer loss thereby; or

(b) If any liabilities, unforeseen at the time of the audit to be made by Harry J. Reicher & Company under paragraph Third hereof or undisclosed by said audit, should develop and reduce the net worth and/or reduce the net profit for the twelve months' period ending April 30, 1941, of the company named on Exhibit A below that shown on said audit; or

(c) If any contingent liability, for which a reserve is set up either on the books of said company or in the course of said audit by Harry J. Reicher & Company, should become an accrued liability in a greater amount than the sum reserved against it in said audit; or

(d) If First Parties should fail to perform any of the terms and conditions hereof on their part to be performed and Second Party should suffer loss on account thereof;

then in any one or more of the events just stated, Second  
294 Party shall have the right to sell the shares of stock held as security by it or any part thereof, either at public or private sale, at such price as may be available, upon notice mailed ten days before said sale to each of First Parties at their respective addresses noted at the outset of this agreement, stating the time and place thereof, and apply the net proceeds thereof after deducting the expenses of the sale against the loss sustained by it. Should the net proceeds of any such sale exceed the amount of Second Party's loss, each of First Parties' proportionate share of said excess shall be turned over to him. Second Party shall have the right, so far as consistent with law, to purchase any shares of stock sold pursuant hereto. Second Party shall have the right to withhold the delivery of the shares of stock herein referred to for the purposes enumerated above for a period of three years from the closing date hereof, provided, however, that at any time or from time to time during said period, Second Party, on two-thirds vote of its Board if Directors, may release all or part or parts thereof. At the expiration of three years from the closing date hereof, any of the aforesaid shares of stock remaining in the hands of Second Party (except any that it may have purchased at a sale held pursuant hereto) shall be delivered to each of First Parties in the proportions due them if no claim against which such stock is held as security

has been made by Second Party and remains undisposed of at that time; in the event such claim has been made and is undisposed of, Second Party may hold said stock until said claim is finally disposed of.

First Parties shall not be liable in damages for any amount in excess of the stock withheld hereunder by reason of the happening of any of the events set forth in this paragraph Eleventh, but the provisions hereof shall not be deemed to exclude or in any wise impair Second Party's right of rescission for a breach of this agreement, or for breach of warranty, or for misrepresentation.

First Parties may at any time substitute in lieu of the stock held as above provided, a good and sufficient surety company bond in an amount acceptable to Second Party; Second Party shall be the sole judge as to the amount of said bond.

Twelfth: First Parties hereby jointly and severally appoint and designate the individual named in the main agreement as the "designee" as their true and lawful attorney-in-fact, for them and each of them in their respective names, places and steads, with full power and authority to said designee to perform such acts and grant or withhold such consents and approvals and do whatever may be required of or permitted to said designee, as fully and to all intents and purposes as said First Parties jointly or severally might or could do if personally present, hereby ratifying and confirming as binding and conclusive upon them and each of them all that said designee shall do or cause to be done by virtue hereof, and the First Parties hereby adopt all the provisions of the main agreement with respect to said designee contained in paragraph Thirteenth thereof, and the First Parties agree that all action taken by the First Parties to the main agreement under the provisions of said paragraph Thirteenth shall be binding upon and shall have the same force and effect as though taken by the First Parties hereto, the intention being that the designee who may from time to time be acting under the main agreement shall also at all times be the designee under this agreement.

Thirteenth: Wherever the expression "closing date" is used herein it shall be deemed to be the same date as the closing date fixed by the main agreement.

Fourteenth: If the main agreement is cancelled in accordance with the provisions thereof, this agreement shall likewise be deemed cancelled. It is expressly understood and agreed, however, that cancellation of this agreement shall in no wise affect the purchase and sale of the common shares of Second Party provided for in Paragraph Fifth hereof, it being intended that the

purchase and sale of said shares are subject to no condition whatsoever.

**Fifteenth:** First Parties agree that at the time for delivery of their stock to the designee as provided in paragraph Tenth hereof, they will simultaneously therewith deliver to said designee resignations signed by all of the directors of the company named on Exhibit A (except such, if any, as may be, at the time of such deposit, directors of Second Party) to become effective upon the closing date hereof as defined in paragraph Thirteenth hereof, but not otherwise, and said resignations shall be delivered by said designee to Second Party at the same time he delivers the stock as provided in said paragraph Tenth to Second Party.

**Sixteenth:** To the extent that the provisions, if any, contained in Exhibit J differ from or are inconsistent with the provisions of the main body of this agreement, the provisions of Exhibit J shall supersede the provisions contained in the main body of this agreement.

**Seventeenth:** Any breach of this agreement by any of First Parties shall be deemed a breach hereof by all First Parties to the extent of entitling Second Party to rescind this agreement or to refuse to perform the same. If for any reason the Second Party shall become entitled to rescind or to refuse to perform the main agreement, the Second Party shall then likewise be entitled to rescind or to refuse to perform this agreement.

**Eighteenth:** It is understood and agreed that wherever, either in this agreement or in the main agreement or any of the agreements executed simultaneously herewith with Second Party, provision is made for action by a specified fraction of the total number of designees provided for in this agreement, the main agreement and agreements executed simultaneously herewith with Second Party, the designee named in the main agreement and reappointed by this agreement shall be counted for all purposes as one.

**Nineteenth:** It is expressly understood and agreed that except for the purchase and sale of common stock of Second Party provided for in paragraph Fifth hereof, this agreement shall not become effective unless the Commissioner of Internal Revenue of the United States on or before the closing date hereof, enters into a closing agreement or closing agreements approved by the Secretary, Under Secretary or an Assistant Secretary of the Treasury in accordance with the Internal Revenue Act and Code and Regulations, declaring that the transaction contemplated hereby and

by the agreements executed simultaneously herewith with Second Party, are or constitute a tax-free reorganization.

298 In witness whereof, the individual parties have affixed their hands and seals, and the corporate parties have caused these presents to be duly executed under seal, the day and year first above written.

H. D. HORTON. [LS]

R. G. CONGER. [LS]

O. P. ROBERSON. [LS]

*First Party.*

[SEAL]

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR, [LS]

*President.*

*Second Party.*

Attest:

B. D. Ryan,

*Secretary.*

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# EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## CONGER REALTY COMPANY, INCORPORATED

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				None
Common				

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total Number of preferred shares of Second Party to be received	Percentage of total Number of common shares of Second Party to be received
H. D. Horton		980/10	100%	100%
R. G. Conger		2/10		
O. P. Roberson		2/10		

Total number of shares issued and outstanding, 1,000.

These shares have been endorsed in blank to Mr. H. D. Horton.

Total No. of shares issued and outstanding-----

300.

## EXHIBIT B

First Parties represent and warrant that they have not either individually or collectively any interest, direct or indirect, in any motor, rail, or water carrier, whether operating or non-operating, either as directors, officers, or stockholders, or by means of a holding or investing company or companies, voting trust or trusts, or in any other manner, other than in Second Party, except as follows:

Exceptions: None.

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## EXHIBIT C

First Parties represent and warrant that the following balance sheet reflects the financial condition of the company to which it relates including contingent liabilities with substantial correctness. First Parties further represent and warrant that the rates of depreciation employed by the company named below during the past five years are as set forth below. First Parties further represent, warrant and agree that all assets of said company, including but not limited to equipment and real estate, are kept on the books of said company at cost, and that they will be, for the four months' period ending April 30, 1941, kept on the books of said company at cost, and that the depreciation rates



employed by said company for the four months' period ending April 30, 1941, will be the same as those set forth below for the year 1940.

### CONGER REALTY COMPANY, INCORPORATED

(Name of Company)

	1936	1937	1938	1939	1940
				Percent 2	Percent 2
Real estate					
Automotive vehicles					
Trailer Vehicles					

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### CONGER REALTY COMPANY, INCORPORATED

Balance Sheet as of Close of Business April 30, 1941

#### ASSETS

Cash in bank	\$168. 41
Accounts Receivable	2, 700. 00
Real Estate—Land	136, 858. 03
Buildings—Net	282, 198. 02
Prepaid Expenses	6, 361. 13
Total Assets	428, 285. 59

#### LIABILITIES

Accounts Payable	(2, 921. 50)
Notes Payable—American Trust Company	165, 000. 00
Notes Payable—Horton Motor Lines, Inc.	97, 706. 88
Accruals—General Expense and Taxes	15, 000. 06
Reserve for State and Federal Income Taxes	22, 135. 60
Total Liabilities	297, 020. 04

#### NET WORTH

Capital Stock	100, 000. 00
Surplus	31, 265. 55
Total Net Worth	428, 285. 59
Total Liabilities and Net Worth	428, 285. 59

(Initialed) HDH.

## EXHIBIT D

**CONGER REALTY COMPANY, INCORPORATED—Income Statement**  
**Year Ended April 30, 1941**

INCOME	
Rental Income from Owned Property.....	\$122,203.22
Rental Income from Sub-Leased Property.....	3,000.00
Total Income.....	<u>125,803.22</u>
EXPENSES	
Depreciation.....	8,314.87
Taxes.....	11,142.64
Insurance.....	1,883.16
Legal Expenses.....	105.00
Interest Expense.....	7,840.81
Miscellaneous Expense.....	420.21
Total Expenses.....	<u>29,706.69</u>
Net Profit.....	<u>96,096.53</u>

(Initialed) HDH.

## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## 305 CONGER REALTY COMPANY—SCHEDULE OF REAL ESTATE

April 30, 1941

Location	Street address	To whom leased	Address	Monthly rental	Expiration date
Charlotte, N. C. <sup>11</sup>	1001-31 S. Clarkson St.	Horton Motor Lines.	Charlotte, N. C.	\$2,500.00	8-31-43
Charlotte, N. C. <sup>11</sup>	1004-18 S. Clarkson St.	Horton Motor Lines.	Charlotte, N. C.	750.00	1-1-45
Philadelphia, Pa. <sup>11</sup>	1701 N. Delaware Ave.	Horton Motor Lines.	Charlotte, N. C.	1,800.00	10-15-41
Pittsburgh, Pa. <sup>11</sup>	219 Dasher St., North Side.	Horton Motor Lines.	Charlotte, N. C.	1,900.00	5-12-45
Atlanta, Ga. <sup>11</sup>	172 Howell St. NE.	Horton Motor Lines.	Charlotte, N. C.	1,400.00	6-30-44
Baltimore, Md. <sup>11</sup>	2101 Washington Blvd.	Horton Motor Lines.	Charlotte, N. C.	1,900.00	8-31-43
Atlanta, Ga.	Howell St., N. E.	Not under lease.			

<sup>1</sup> Balance due American Trust Company, Charlotte, North Carolina, on this property at 4-30-41, \$165,000.00.

<sup>2</sup> Remarks: Option to renew for 5 years on same terms.

(Initialed) HDH.

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## CONGER REALTY COMPANY—SCHEDULE OF LEASES

April 30, 1941

Location	Street address	Lessor	Lessor's address	Monthly rental	Expiration date
D Charlotte, N. C.	801 S. Summit Ave.	J. Luther Snyder	Charlotte, N. C.	600.00	8-31-44

Remarks: Agreement in Lease to extend expiration date beyond 5-year period for such additional time as is necessary to complete addition to building.

Note: This property is subleased to Brown Equipment and Manufacturing Company, Incorporated, for the life of this lease at a rental of \$900.00 per month.

(Initialed) HDH.

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

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## EXHIBIT G

First Parties represent and warrant that the following is an accurate and complete statement of the insurance coverage of each kind that exists with respect to the company named on Exhibit A annexed hereto as of the date of this agreement, showing the amount and kind of coverage, the names of the insurance companies, expiration dates of insurance policies, and premiums thereon.

## 309 CONGER REALTY COMPANY—SCHEDULE OF INSURANCE

April 30, 1941

Insurance company	Type of coverage	Amount of coverage	Expiration date	Original premium
Hartford	Fire, etc.	\$55,000.00	10-21-42	\$351.47
Equitable	Fire, etc.	30,000.00	10-21-41	238.85
Hartford	Fire, etc.	45,000.00	11-1-41	748.13
Equitable	Fire, etc.	500.00	1-1-42	15.47
Hartford	Fire, etc.	46,000.00	12-15-42	501.66
Hartford	Fire, etc.	10,000.00	3-6-43	138.75
Equitable	Fire, etc.	10,000.00	3-6-43	138.75
Hartford	Fire, etc.	50,000.00	6-30-43	1,068.31
Hartford	Builders Risk	25,200.00	6-1-41	359.42
Hartford	Builders Risk	44,000.00	12-15-42	501.66

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

None.

Any actions, if any, not listed, are fully covered by insurance.

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## EXHIBIT I

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941 and that as to the items below under the column "Non-recurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$ shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$

Nonrecurring Items, None.

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## EXHIBIT J

The company named under Exhibit A annexed hereto has purchased sites for buildings to be used by Horton Motor Lines, Inc. at Greenville, S. C., and Washington, D. C. Negotiations are in process for the purchase of additional property in Baltimore, adjacent to property presently owned and in use. Plans and specifications are being prepared for the construction of buildings on the three properties referred to.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part".

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

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## EXHIBIT C-1b

Exhibits A, E, F, H, I, and J, attached to the contracts of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Inc., Transportation, Incorporated, Barnwell Warehouse and Brokerage Company, Brown Equipment and Manufacturing Company, Southern New England Terminals, Inc., are grouped in the order above named, and segregated as to company.

Exhibits C and D attached to the said contracts, are contained in Exhibits BMC-45, B-2, and B-6.

Copies of such exhibits are omitted for any company where no special provision was contained therein.

Exhibits B and G of the contracts are covered in Exhibits BMC-45 C-1c.

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## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and non-assessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agree-



ments, either written or oral, concerning the sale, transfer or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

### THE TRANSPORT COMPANY

(Name of Company)

DELAWARE

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				2,000
Common				2,500

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of preferred shares of Second Party to be received	Percentage of total number of common shares of Second Party to be received
The Transport Company	1,120	1,976½	100%	100%

Total No. of shares issued and outstanding 1,380 ; 1,976½.

315 There are 260 shares of preferred stock of the above company owned by others than First Party. First Party represents that said stock is callable at \$105. It is understood and agreed that the balance sheet of April 30, 1941, to be handed to Harry J. Reicher & Company under the provisions of paragraph Third of the annexed contract will be adjusted to reflect the situation which would have resulted if all of the issued and outstanding preferred stock above described had been called and the redemption price thereof had been paid prior to April 30, 1941.

The First Party owes \$900,000. on account of the purchase price of said stock owned by it. Said preferred stock owned by it is pledged with Kuhn, Loeb & Co. as security for a note of First Party for \$107,000. The former owners of said common stock have a right to pledge and may have pledged some or all thereof, the agreement with them providing that any such pledge shall be on such terms that the pledged stock may be released upon paying to them respectively their proportionate part of said unpaid balance of said purchase price.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said Company, showing the location, monthly rentals, expiration dates and other details with regard to such leased premises:

## REAL ESTATE—ARROW CARRIER CORPORATION, PATERSON, N. J.

April 30, 1941

Description	Location	Book cost	
		Land	Building
(1) Terminal and Office Brick and Steel	212-218 Getty Ave., Paterson, New Jersey	\$39,511.77	\$212,942.49
(2) Storage Garage Corrugated Steel	184-194 Getty Ave., Paterson, New Jersey	5,000.00	18,264.73
(3) Repair Garage, Brick	do.		5,317.26
(4) Storage Garage, Brick	918-924 East 24 St., Paterson, New Jersey	3,000.00	22,144.85
(5) Terminal and Office, Brick	232-236 Walnut St., Allentown, Penna.	5,000.00	46,116.93
(6) Parking Lot	224-238 Getty Ave., Paterson, New Jersey	30,832.20	
(7) Terminal, Corrugated Steel	Danville, Penna.		4,138.25
(8) Dwelling, Frame	196 Getty Ave., Paterson, N. J.	2,000.00	1,553.00
(9) Undeveloped Lots	Jerome and Kearney Sts., Allentown, Penna.		21,669.60
(10) Undeveloped Lots	1129 Remington Ave., Scranton, Penna.		2,596.28
		85,343.97	334,743.39

\* Mortgage held by Citizens Trust Company, Paterson, N. J., as security for \$5,000.00 loan.  
 \* Mortgage held by Paterson Building & Loan Association amount of \$12,000.00.

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## LEASES—ARROW CARRIER CORPORATION, PATERSON, NEW JERSEY

April 30, 1941

Location	Lessor	Expiration	Monthly rent
72 Olive St., Johnson City, N. Y.	Della Penna Bros. & Mezzanonna	10/31/42	\$70.00
139 Welles St., Forty Fort, Penna.	Frank R. Matheson	10/14/43	30.00
139 Welles St., Forty Fort, Penna.	Edward Eyerma & Son	10/14/42	50.00
Cedar St., Hazleton, Penna.	Duplan Silk Corporation	1/31/47	250.00
11th Ave. & Reading R. R., Lebanon, Penna.	John S. Weaver	7/31/41	60.00
525/531 West 24 St., New York City	Grace B. Underwood	12/31/46	666.67
North Broad St., Phillipsburg	A. W. Leidy	4-20/43	50.00
McKnight & W. Amity Sts., Reading, Penna.	Parrish Pressed Steel Co.	5/31/42	100.00
1200 Railroad Ave., Sunbury, Penna.	Merit Laundry	8/31/42	100.00
Locust St., Williamsport, Penna.	Abe & Irma Fischer	6/30/41	125.00
End of Jefferson Ave., Scranton, Penna.	Scranton Electric Co.	12/31/41	150.00
Arch St., Shamokin, Penna.	Shamokin & Edgewood Elec. Railway.	10/31/41	75.00

## EXHIBIT F

ARROW CARRIER CORPORATION, PATTERSON, N. J.

April 30, 1941

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Employment Contracts effective when, as, and if, The Transport Company takes title and for five years thereafter:

John E. Ackerman.....	\$25,000.00
James J. Buckley, Jr.....	9,000.00
George F. Whitehead.....	12,000.00
J. S. A. Out (John Hamilton).....	6,000.00)

## EXHIBIT H

ARROW CARRIER CORPORATION, PATTERSON, N. J.

April 30, 1941

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

(1) The Zurich General Accident and Liability Company is handling 21 claims against the company for motor accidents, the total of which aggregates \$6,345.00. The Company is protected by adequate coverage for both public liability and property damage so that no contingent liability exists in this connection.

(2) Cargo damage claims of approximately \$300.00 were unsettled at April 30, 1941.

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## EXHIBIT I

First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$40,793.70 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$40,793.70.

## Nonrecurring Items:

Boat expense	\$5,700.00
John Hamilton Salary	7,200.00
John E. Ackerman	11,000.00
George F. Whitehead	6,000.00
James J. Buckley, Jr.	9,000.00
Moving of garage	1,893.70

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## EXHIBIT J

Paragraph Second appearing in the main body of the annexed Contract is hereby deleted, and the following is substituted therefor:

"Second: Second Party represents and warrants (1) that it has no interest, direct or indirect, in any motor, rail or water carrier whether operating or nonoperating, either as a stockholder or by means of a holding or investment company or companies, voting trust or trusts, or in any other manner, other than that which

results from the agreements which were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof; (2) that it has no subsidiaries or affiliates and has incurred no liabilities of any nature, except for compensation for services, for expenses in connection with its organization, for legal fees in connection with the preparation of this agreement and the agreements which were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof, for accounting services; and for the effectuation or attempted effectuation of the purposes thereof; that Second Party is a validly organized Delaware corporation, that its directors at this time are H. D. Horton, B. M. Seymour, Wiley Moore, Clifford C. Brock, R. W. Barnwell, Everett J. Arbour, John J. McCarthy, and John P. Altwater, and its officers are: Chairman of the Board, H. D. Horton; President, Burge M. Seymour; Vice President, Office vacant; Secretary, B. D. Ryan; Treasurer, Burge M. Seymour; that the only issued and outstanding stock of Second Party is 57,924 shares of common stock owned on the books of Second Party by various persons; (4) that the charter of Second Party and the Amendments thereto are as filed in the office of the Secretary of State of Delaware, that no amendments to said charter have been filed subsequent to May 26th, 1941, and that the authorized stock, the classes, preferences and rights thereof are as set forth in said charter and amendments; (5) that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of the authorized and unissued stock of Second Party, except such agreements as were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof and subscription agreements executed or about to be executed by Mr. B. M. Seymour for certain shares of the common stock of Second Party."

322 "Wherever reference is made in the main body of the annexed contract to the agreements which were to be executed simultaneously therewith, it is intended to refer to the agreements which were executed under date of June 11, 1941, with the stockholders of the companies listed in paragraph Fourteenth hereof.

Paragraph Eleventh appearing in the main body of the annexed contract is hereby deleted, and the following is substituted therefor:

"Eleventh: Within ten days after decision by the Interstate Commerce Commission on the application or applications re-



ferred to in paragraph Eighth hereof, provided such decision shall constitute approval by the Interstate Commerce Commission as defined in paragraph Fifteenth hereof, the First Party agrees to deliver to the Second Party all of the shares of stock shown on Exhibit A annexed hereto to be owned by it in the company named on said Exhibit. The certificates of stock so delivered shall be endorsed in blank or accompanied by stock powers running to Second Party with signatures guaranteed by a member bank of the Federal Reserve System, or a member of the New York Stock Exchange, and shall be accompanied by the required stock transfer stamps or cash equal to the cost thereof."

Paragraph Twelfth in the main body of the contract annexed hereto is hereby amended by deleting the word "designee" where it appears on the third and fifth lines of the said paragraph and inserting in place thereof the words "First Party." Said paragraph Twelfth is further amended by deleting the parenthetical matter appearing on the fifth, sixth, and seventh lines of said paragraph.

Wherever the term "First Parties" is used in the main body of the contract annexed hereto, it shall be deemed to read "First Party."

Paragraph Fourteenth appearing in the main body of the annexed contract is hereby deleted, and the following is substituted therefor:

"Fourteenth: Second Party has entered into contracts for the acquisition of the stock of the companies listed below: Horton Motor Lines, Incorporated; Consolidated Motor Lines, Incorporated; Barnwell Brothers, Incorporated; McCarthy Freight System, Inc.; M. Moran Transportation Lines, Inc.; Southeastern Motor Lines, Incorporated; The Transportation, Inc.; 323 Southern New England Terminals, Inc.; Barnwell Warehouse & Brokerage Company; Conger Realty Company; Brown Equipment and Manufacturing Company. First Party has examined and approved all of said contracts, both as to form and substance.

"Second Party agrees that it will not enter into any agreement for the acquisition of stock or any interest in any company other than those named above without the written consent of the designee provided for herein

"(a) as to the form and substance of any such agreement, and

"(b) as to the sufficiency of the number of shares of stock represented by the stockholders signing the same."

Paragraph Seventeenth in the main body of the contract annexed hereto is hereby amended by deleting the word "designee" where it appears in the second and fourth lines of said paragraph and inserting in place thereof the words "First Party."

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

Because of the method used by Arrow Carrier Corporation in handling its tire accounts, there shall be substituted the following procedure in lieu of the procedure provided for in subdivision (c) of paragraph Third:

For the purpose of determining net worth, an inventory of tires on equipment shall be taken as of April 30, 1941, and computed at 50% of cost.

For the purpose of determining tire expense for the twelve months' period ending April 30, 1941, such tire expense shall be computed at the average tire expense for the three calendar years of 1938, 1939, and 1940, adjusted for the increased number of vehicles owned by this company on April 30, 1941.

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#### EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement: (See "Note No. 1" at the end of this Exhibit A.)

## BARNWELL BROTHERS, INCORPORATED

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred, par value, \$100.00				500
Common, par value, \$100.00				1,500

1	2	3	4	5
Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of preferred shares of Second Party to be received	Percentage of total number of common shares of Second Party to be received
R. W. Barnwell	183 1/2	20	2.28	2
Willard Smith Barnwell	52	40	4.92	4
Robert William Barnwell, Jr.		6 1/2	.60	.65
John K. Barnwell	144 1/2	59	5.79	5.9
Dolores Morrow Barnwell	20	54	5.46	5.4
Mary Barnwell		5	.45	.5
James A. Barnwell	144 1/2	48 1/2	4.83	4.85
Cornelia Vincent Barnwell	21	70	6.96	7
Hannah Bomse		28	2.58	2.80
William R. Lacey	415 1/2	82	8.56	8.20
Arthur D. Crowe		28	2.58	2.80
M. M. Stuart	15	50	4.97	5
323 F. H. Mendenhall		10	.92	1
Mary Thomas Walker		5	.45	.5
P. L. Walker	3	5	.53	.5
J. Hardy Hurst		5	.46	.5
A. Hall Barnwell		4	.37	.4
E. P. Harrison, Jr.	20		.48	
E. C. Crowder	10		.24	
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Robert William Barnwell, Jr.		18	1.66	1.8
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Willard Holt Barnwell		36	3.32	3.6
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Joseph Clarendon Barnwell		36	3.32	3.6
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Eleanor Smith Barnwell		20	1.85	2
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Betty Lynn Barnwell		20	1.85	2
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Richard Brantley Barnwell		20	1.86	2
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Julian Forrest Barnwell		20	1.85	2
Barnwell Warehouse and Brokerage Company	93	310	30.83	31

Total No. of shares issued and outstanding, 323, 1,000.

Note No. 1.—The trustee in each of the seven trusts listed on this Exhibit A is the legal owner of record of the respective shares indicated and is empowered to dispose of the same as provided herein, but is not the beneficial owner of said shares.

## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates and other details with regard to such leased premises:

## REAL ESTATE OWNED

	Total cost	Res. for deprec.	Book value	Incumbrances or liens	
				Amount	Description
Shelby, N. C.	\$6,692.92	\$482.08	\$6,210.84		
Charlotte, N. C.	37,381.63	998.37	36,383.26	\$2,750.00	Mortgage
Ch'ville, Va.	14,249.41	262.62	13,986.79		
Lyneburg, Va.	17,972.06	426.91	17,545.15		
Burlington, N. C.	106,986.01	2,173.34	104,812.67	35,000.00	Mortgage
High Point, N. C.	2,542.75		2,542.75		
Philadelphia, Pa.	15,241.17		15,241.11		
Martinsville, Va.	800.00		800.00		
Total	201,865.89	4,343.32	197,522.57	37,750.00	

## REAL ESTATE LEASED

Location	Expiration date	Monthly rental
490 Greenwich St., N. Y. C.	9/30/43	\$900.00
489 Greenwich St., N. Y. C.	9/30/43	100.00
908-910 Cameron St., Alexandria, Va.	4/15/42	100.00
Lloyd & Gramby St., Baltimore, Md.	4/1/46	299.00
East Main St., Martinsville, Va.	4/15/42	50.00
90 Grove St., Paterson, N. J.	9/30/43	200.00
35-43 Perwick St., N. Y. C.	Month to month	75.00
307 McMannen St., Durham, N. C.	"	25.00
712-9th Ave., Hickory, N. C.	"	15.00
111 E. Luray St., Philadelphia, Pa.	"	125.00
37 King St., New York City	"	70.00
675 Garden St., Elizabeth, N. J.	"	100.00
Henry & Camron Sts., Alexandria, Va.	"	150.00
239 Haywood St., Ashville, N. C.	"	18.00
Franklin Hotel, Richmond, Va.	"	16.00
316 Park Ave., Winston-Salem, N. C.	"	50.00
Luray & Front St., Philadelphia, Pa.	"	20.00
Forty-Fort Theatre, Forty-Fort, Pa.	"	30.00
905 Greenwood St., Cumberland, Md.	"	40.00

## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in exist-

ence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties; and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Building Contract, Philadelphia Terminal	\$42,000.00
Architect's Fee	1,200.00
Engineer's Fee	500.00
Anchor Fencing	1,313.20
Purchase of eleven Mack LJT Tractors	51,755.00
Purchase of eleven Corbitt Trailers	21,735.68

Employment contracts with certain of its employees, none of which extend beyond December 31, 1941.

Contract with S. W. Shelton, Lawyer, Richmond, Virginia, for personal services as Public Relations Counsel, compensation \$3,600.00 per year. Contract may be terminated at any time upon 12 months' previous notice.

#### EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

An action at law pending in the United States District Court for the Middle District of North Carolina, Durham Division, in which Henry G. Miller, Receiver of Central Mutual Insurance Company of Chicago, is plaintiff, and Barnwell Brothers, Incorporated, is defendant for the sum of \$29,087.65 based on alleged right of assessment against the defendant under certain insurance policies and on alleged unpaid premiums. Defendant is advised



that it has a complete defense to said action, but if the plaintiff should prevail, the dependant is advised that it has a set-off in the sum of approximately \$20,000.00 against any judgment which the plaintiff might obtain.

All other pending or threatened litigation is fully covered by insurance.

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## EXHIBIT I

First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$8,420.32 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$8,420.32.

Nonrecurring Items: 1. Extraordinary legal, etc., \$8,420.32.

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## EXHIBIT J

1. First Parties hereby jointly and severally appoint and designate R. W. Barnwell of Burlington, North Carolina, and Virgil R. Goode of Travelers Building, Richmond, Virginia, as their true and lawful attorneys in fact for them and each of them in their respective names, places and steads with all the power and authority set forth in paragraph Thirteenth and in various other places in this agreement, referred to as the "Designee" provided for by this agreement. They shall together be deemed and considered the "designee" wherever that term is used in said agreement and shall together have only one voice, provided that should either the said R. W. Barnwell or the said Virgil R. Goode, after such notice as may be provided for in this agreement, fail to attend a meeting of designees or fail to act within the time required or if either for any reason be no longer acting hereunder, then the one attending such meeting or the one acting within the required time shall alone exercise all the power and authority of both.

Should the said R. W. Barnwell and the said Virgil R. Goode both attempt to act at a meeting of designees or otherwise but not concur in their decisions so as to permit them to act jointly, neither of their actions shall be considered and there shall be deemed to be a vacancy in the designation of designee hereunder insofar as the particular matter or matters as to which such disagreement exists, are concerned, and in such event any provision contained in any paragraph or part of this agreement which requires or permits the consent, act or approval of the designee provided for herein is waived by First Parties.

2. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

3. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

4. It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

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## EXHIBIT T

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and non-assessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon, that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## CONSOLIDATED MOTOR LINES, INC.

(Name of Company)

## CONNECTICUT

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred.....				None
Common.....				200,000

Names of First Parties	Number of shares of preferred stock owned	Number of shares of common stock owned	Percentage of total number of preferred shares of Second Party to be received	Percentage of total number of common shares of Second Party to be received
Joseph Arbour.....	None	293	.1333	.1333
Emma Arbour.....	None	260	.1182	.1182
Everett J. Arbour.....	None	255	.1352	.1332
Helen Arbour.....	None	180	.0819	.0819
Everett J. Arbour—Trustee.....	None	40	.0182	.0182
Everett J. Arbour—Trustee.....	None	40	.0182	.0182
John W. Ghent.....	None	35	.0158	.0158
Elsie Cotter Ghent.....	None	41	.0186	.0186
John W. Ghent—Trustee for the Benefit of: Mary Elizabeth Ghent.....	None	5	.0023	.0023
Elsie G. Ghent.....	None	5	.0023	.0023
Walter H. Ghent.....	None	5	.0023	.0023
John W. Ghent, Jr.....	None	5	.0023	.0023
Barbara A. Ghent.....	None	5	.0023	.0023
Helen H. Jacoboff.....	None	40	.0182	.0182
Phoenix Securities Corp.....	None	374	.3520	.3520
Earl E. Simpson.....	None	32	.0145	.0145
Wendell E. Simpson.....	None	43	.0196	.0196
Laura Hess Payson.....	None	43	.0196	.0196
Hazel E. Simpson.....	None	15	.0196	.0196
Alexis P. Scott.....	None	17	.0077	.0077
Total number of shares issued and outstanding.....	None	2,199		

Note: Contract dated June 12, 1936 with Phoenix Securities Corporation provided that all stock holders agreed not to sell any or all of their holdings without first giving Phoenix the same opportunity to dispose of their stock pro rata under the same terms and conditions.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## CONSOLIDATED MOTOR LINES, INC.

I. Real Estate owned—None.

II. Real Estate Leases.

Date	Location	Maturity	Annual rental
	Hartford—Main Office	Monthly Basis	\$6,800.00
10/10/35	Hartford Terminal & Shops	12/31/45	5,375.00
7/30/36	Hartford Terminal & Shops	12/31/45	3,664.30
8/1/39	Hartford Terminal & Shops	12/31/45	1,800.00
5/1/41	New Britain Terminal	4/30/46	4,800.00
	New Haven Terminal	Monthly Basis	3,913.80
1/26/37	New York City Terminal	4/30/49	26,500.00
12/28/38	New York City Terminal	4/30/49	
		(2/1/39 to 12/31/41)	3,000.00
		(1/1/42 to 12/31/45)	3,330.00
		(1/1/46 to 4/30/49)	3,650.00
			11,000.00
2/1/41	Boston Terminal	1/31/56	3,000.00
7/6/37	Providence Terminal	7/31/42	3,000.00
7/28/36	Springfield Terminal	9/30/46	13,500.00
	Waterbury Terminal	Monthly Basis	1,200.00
8/21/33	Bridgeport Terminal	12/1/43	6,172.80
7/13/38	Worcester Terminal	7/31/41	2,100.00
6/17/36	Albany Terminal	8/14/41	4,200.00
1/19/37	Newark Terminal	5/7/47	6,000.00
2/10/40	Newark Terminal	5/7/47	1,500.00
1/14/37	Norwich Terminal	2/28/42	1,000.00
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3/29/37	Lawrence Terminal	4/30/42	2,000.00
2/15/37	Pittsfield Terminal	9/1/47	1,800.00
9/ 3/36	Philadelphia Terminal	10/14/41	4,800.00
7/12/37	Geneva Terminal	7/12/47	4,000.00
1/26/39	Buffalo Terminal	11/1/43	3,720.00
10/31/36	Syracuse Terminal	11/30/41	1,600.00
8/ 4/37	Utica Terminal	8/31/42	4,500.00
	Binghamton Terminal	Monthly Basis	600.00
	Binghamton Truck Storage	Monthly Basis	144.00
1/10/41	Stamford Terminal	7/9/41	200.00

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

1. Sales commission contract dated December 18, 1937 with Harold C. Davis. Contract is for one year and is automatically renewable for successively yearly periods. Sixty days notice of

termination must be given by either party before expiration of the term of the contract.

2. Retainer agreement dated February 14, 1937 with Hugh M. Joseloff, expires December 31, 1941.

3. Contract dated June 12, 1936 with Phoenix Securities Corporation provides that all stockholders agree not to sell any or all of their holdings without first giving Phoenix the same opportunity to dispose of their stock pro rata under the same terms and conditions.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises or privileges null and void.

## PENDING LITIGATION

Date of accident	Plaintiff and amount of suit	Remarks
9/24/38	Edith Weatherwax \$500.00	Liability questionable. Reserve \$250.00.
11/23/38	United Electric Light Co. of Springfield, Mass., \$300.00	Liability very questionable. Reserve None.
10/10/39	M & M Trans. Co., \$1,500.00	Judgment for Plaintiff \$484. An appeal has been filed by CML. Reserve \$500.00.
10/10/39	Jas. E. MacMillan, \$5,000.00	Liability questionable. Minor injuries. Reserve \$150.00.
7: 8/39	Thomas McGrath \$5,000.00	Liability questionable. Minor injuries. Reserve \$100.00.
1/26/40	Frank Coryell, \$500.00 (PD), \$10,000.00 (PI)	Liability yes. Reserve \$300.00. Reserve \$750.00. Reasonably adequate.
2/26/40	James Kennedy, \$5,000.00	Liability questionable. Minor injuries. Reserve \$200.00.
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5/25/40	Louis Orto, \$1,300.00 (PD) \$251,000.00 (PI)	Liability. None. Coroner's Finding exonerated our driver. Plaintiff, owner and operator. (Fatal)
5/25/40	Philip Campinelli, \$50,000.00	Reserve. None. Reserve, \$500.00.
5/25/40	Fred Santino, \$15,000.00	Liability. None. Reserve, \$750.00.
5/25/40	D. Robolotta, \$25,000.00	Liability. None. Reserve, \$750.00.
5/25/40	Carmin Pasquito, \$25,000.00	Liability. None. Reserve, \$250.00.
5/25/40	Wm. Tortelli, \$15,000.00	Liability. None. Reserve, \$250.00.
5/31/40	Milton West, \$3,000.00	Liability questionable. Reserve, \$125.00.
6/21/40	Sufron Monterola, \$2,000.00	Liability. Yes. Minor Injuries. Reserve, \$100.00.
6/21/40	Dorothy Monterola, \$2,500.00	Liability. Yes. Minor injuries. Reserve, \$300.00.
6/21/40	Sufron Monterola, Jr., \$3,500.00	Liability. Yes. Minor injuries. Reserve, \$200.00.
6/21/40	John C. Monterola, \$3,500.00	Liability. Yes. Minor injuries. Reserve, \$200.00.
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6/26/40	Raymond Laudes (Driver), \$10,000.00	Liability. Yes. Minor Injuries. Reserve \$500.00
6/26/40	Louise Sweeney, \$25,000.00	Liability. Yes. Serious Injuries. Reserve \$7,000.00 reasonably adequate. Reinsured over \$10,000.00.

1 Excess liability policy reinsures Consolidated Motor Lines liability over \$10,000 in each accident up to \$100,000/\$300,000.



## PENDING LITIGATION—continued.

Date of accident	Plaintiff and amount of suit	Remarks
6/26/40	John W. Sweeney, \$10,000.00 <sup>1</sup>	Liability, Yes. Reserve \$500.00.
8/17/40	Michael Jusko, \$2,500.00	Liability, None. Reserve, None.
8/17/40	John Jusko, \$12,500.00 <sup>1</sup>	Liability, None. Reserve, None.
8/17/40	Mary Jusko, \$1,000.00	Liability, None. Reserve, None.
8/17/40	Elizabeth Jusko, \$10,000.00 <sup>1</sup>	Liability, None. Reserve, None.
8/17/40	George Humenik, \$200.00	Liability, Possibly Yes. Minor Injuries. Reserve, \$100.00. Reserve, \$250.00.
10/19/40	Susana Lopez, \$115.50 (PD); \$15,000.00 (PI) <sup>1</sup>	Liability, Possibly Yes. Minor Injuries. Reserve, \$150.00.
10/19/40	Joseph Barrios (Driver), \$1,500.00	Liability questionable. Reserve, \$200.00.
339		Liability, None. Reserve, None.
1/ 3/41	Rosario Spinella, \$500.00	Liability, Yes. Reserve, \$505.00. Reasonably adequate.
2/10/41	Mitnick's Bakery, \$195.66	Liability very questionable. Reserve, \$100.00.
2/15/41	Longo's Express, \$2,000.00	Liability very questionable. Reserve, \$400.00.
3/ 1/41	Myra Walker (owner), \$1,000.00	Liability very questionable. Reserve, \$250.00.
3/ 1/41	Harold Walker (Driver), \$50,000.00 <sup>1</sup>	Liability questionable. Reserve, \$25.00.
3/ 1/41	Harry Walker, \$10,000.00 <sup>1</sup>	Liability, None. Reserve, None.
3/ 1/41	Harold Indursky, \$300.00	Liability, None. Reserve, None.
2/21/41	Raymond Clark (Minor), \$10,000.00 <sup>1</sup>	
2/21/41	Walter Clark (Father), \$5,000.00	
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3/17/41	Joseph George, \$3,000.00	Liability, questionable. Reserve, \$1,250.00.
5/ 5/41	Wm. Strevy (Owner). (Complaint with amount of suit not yet rec'd.)	Liability, None. Reserve, None.
5/ 5/41	Wilbur Borst (Operator). (Complaint with amount of suit not yet rec'd.)	Liability, None. Reserve, None.
6/ 4/39	Wilbert Rainville, \$25,000.00 <sup>1</sup>	Liability, Questionable. Reserve, \$500.00. (Compensation Case.)
9/9/39	Acadia Mfg. Supply Co., \$1,489.94	Liability very questionable. Reserve, \$1,489.94 (Cargo Claim).

<sup>1</sup> Excess liability policy reinsures Consolidated Motor Lines Liability over \$10,000 in each accident up to \$100,000/\$500,000.

## EXHIBIT I

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First Parties represent, warrant and agree that all items listed below were actually expended by or became accrued Liabilities of the company, named on Exhibit A annexed hereto during the twelve months period ending April 30, 1941 and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$57,347.16 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$57,347.16.

## Nonrecurring Items:

- Professional Services:
 

To Coverdale & Colpitts	\$6,452.71
To Phoenix Securities Corporation	5,000.00
<b>2. Bounties to Officers and Employees</b>	<b>45,894.45</b>

## EXHIBIT J

It is mutually agreed that the company named on Exhibit A annexed hereto may, between April 30, 1941, and the closing date provided for in the annexed agreement, enter into lease agreements for terminals presently constructed or to be constructed in the future at or near Albany and Syracuse, New York; Philadelphia, Pennsylvania; and Waterbury, Connecticut, with such persons, firms, or corporations, in such locations either in or near said cities, for such periods of time, at such rentals, and on such other terms and conditions as the Board of Directors of said company shall authorize or approve; and in connection therewith and to assist in the construction of such terminals, or terminals may borrow such sums of money from any bank, individual, firm, or corporation, and advance to the lessors of such terminal all or part of the sums so borrowed, all in such amounts, at such times, and on such terms and conditions as may be authorized or approved by the Board of Directors of the company. It is not intended by the foregoing to imply, directly or indirectly, that the contemplated action above referred to, if taken, will not be in the ordinary course of business and for a reasonable consideration in the light of prevailing markets, within the meaning of paragraph Sixth of the annexed agreement.

It is further mutually understood and agreed that the company named on Exhibit A may, between April 30, 1941, and the closing date provided for in said agreement, purchase or otherwise acquire up to ninety (90) shares of its issued and outstanding capital stock at a price not to exceed Four Hundred (\$400.00) Dollars per share, provided that any amount so expended shall be deducted from the net worth of the company named on said Exhibit A, as determined in accordance with Article Third of this agreement.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named

hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner<sup>1</sup> of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

### MCCARTHY FREIGHT SYSTEM, INC.

(Name of Company)

MASSACHUSETTS

(State of Incorporation)

Class of classes of stock	Total number of shares authorized
Preferred	1,000 shs. cumulative preferred stock of a par value of \$100 each authorized, but none outstanding.
Common	7,500 shs.

1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party <sup>1</sup> to be received <sup>2</sup>	5 Percentage of total No. of common shares of Second Party <sup>1</sup> to be received <sup>2</sup>
1. John J. McCarthy		2,335	31.1344%	31.1344%
2. George F. Bertucio		900	12%	12%
3. Charles F. McCarthy		665	8.8644%	8.8644%
4. Isabel J. McCarthy		1,000	13.44%	13.44%
5. Kathleen E. McCarthy		1,000	13.44%	13.44%
6. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Elizabeth Jane Bertucio and Others		400	5.15%	5.15%
344 7. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Mary Louise Bertucio and Others		400	5.15%	5.15%
8. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Robert Charles Bertucio and Others		400	5.15%	5.15%
9. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Louise M. Bertucio and Others		400	5.15%	5.15%
Total No. of shares issued and outstanding	None	7,500	100%	100%

<sup>1</sup> To be received by First Parties collectively.

<sup>2</sup> By this First Party.

<sup>3</sup> Except that shares herein indicated as held by Trustees are not beneficially owned by them.

345 As to all items: said shares of common stock of McCarthy Freight System, Inc., have applicable restrictions on transfer set forth in the minutes of stockholders and Directors of said company. All parties concerned are bound by agreement to waive such restrictions for the purpose of consummation of this agreement.

As to item 2: 250 of said shares are covered by an option dated August 1, 1938 to John J. McCarthy and Charles E. McCarthy jointly, and the survivor, and the executors, administrators, or assigns of such survivor. All parties concerned are bound by agreement to release said option for the purpose of consummation of this agreement.

As to the remaining 650 of the shares in item 2; and as to items 6, 7, 8, and 9: said shares are covered by an option dated June 6, 1940, to McCarthy Freight System, Inc., which is bound by agreement to release said option for the purpose of consummation of this agreement.

As to items 2, 6, 7, 8, and 9: these are, as to said shares of common stock (together with, as to (2) below only, certain dividends thereon as provided in outstanding dividend orders which all parties concerned are bound by agreement to release for the purpose of consummation of this agreement) of McCarthy Freight System, Inc., possible claims following: (1) Claims of creditors of The Byrolly Transportation Company and/or claims included in First Parties' letter of June 2, 1941, to Second Party; and (2) Claims of McCarthy Freight System, Inc., under its note dated August 1, 1938, as increased and/or decreased to date. McCarthy Freight System, Inc., is bound to release said collateral upon substitution of stock of Second Party upon  
346 consummation of this agreement.

As to each of items 6, 7, 8, and 9: upon the creation of the trust the Trustees thereunder acquired "All the right, title, and interest of George E. Bertucio in and to" the respectively above-listed 400 shares of common stock of McCarthy Freight System, Inc., and also 16 shares of common stock of Southern New England Terminals, Inc.

It is understood and agreed that the disclosures recited above shall not be deemed exceptions to the representations and warranties made in this Exhibit A.

George E. Bertucio agrees—notwithstanding the limitations of liability set forth in Paragraph Twelfth of the annexed agreement—to indemnify the Second Party against, and save the Second Party harmless from, any and all liens, encumbrances, pledges, attachments on, or any other claims with respect to, the stock listed in items 2, 6, 7, 8, and 9 of this Exhibit A.

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

Location of property	Property	Owned or leased	Expiration date of lease	Monthly rental	Lessor	Encumbrances or liens	Amount as of 12/31/40
13 Leonard St., Albany, N. Y.	Terminal	Leased	Tenant at will	\$50.00	Commet's Garage		
Baile Rd. and Ballard St., Worcester, Mass.	Terminal	Owned	12/31/50	500.00	Southern New England Terminals, Inc. (Constructed on leased land.)	Mortgage (Donald Finance Co.)	\$6,000.00
70 North St., Cambridge, Mass.	Terminal	Owned					
Rear 21-23 Lawrence St., Brockton, Mass.	Terminal	Tenant at will		250.00	Brockton Ice and Coal Co.		
Wages and Olney Sts., Taunton, Mass.	Terminal	Leased	7/31/43	400.00	Southern New England Terminals, Inc.		
145 Nye St., New Bedford, Mass.	Terminal	Tenant at will	7/31/41	35.00	Heard Coal Co.		
501 Meriden Road, Waterbury, Conn.	Terminal	Leased		250.00	Mary Grace S. Bahren		
Rear 201 Columbus Ave., New Haven, Conn.	Terminal	Leased	12/31/41	100.00	Mrs. Fannie Cohen	Agreement to pay for playground constructed by lessor.	Due as of 5/17/41
225 Waterview Ave., Bridgeport, Conn.	Terminal	Leased	At will	125.00	Jacob Brothers, Inc.		\$750.00
4th St., Pittsfield, Mass.	Terminal	Leased	8/31/50	600.00	Southern New England Terminals, Inc.		
60 Southeastside Plainfield St., Chicopee, Mass.	Terminal	Leased	7/31/41	300.00	Bausch Machine Tool Co.		
26 Memorial Ave., Springfield, Mass.	Exec. Office	Tenant at will		40.00	International Harvester Co.		
698 Rodman St., Fall River, Mass.	Terminal	Tenant at will		50.00	McKenzie Winslow		
61 North Main St., Jewett City, Conn.	Terminal	Tenant at will		70.00	Mitch's Garage		
Rear 126-7 Main St., East Hartford, Conn.	Land and Terminal	Owned					
Oak St., West of Bath St., Providence, R. I.	Terminal	Leased	9/30/49	833.33	Southern New England Terminals, Inc.	Mortgage (East Hartford Trust Co.)	\$10,200.00
401 Broadway, New York City	Sales Office	Leased	30-day notice	30.00	Metropolitan Life Insurance Company		



Location of property	Property	Owned or leased	Expiration date of lease	Monthly rental	Lessor	Encumbrances or liens	Amount as of 12/31/40
Boston & Albany R. R., North Adams, Mass.	Terminal	Leased	30-day notice	6.45	New York Central		
348 North Street, Cambridge, Mass.	Land	Leased	11/30/47	125.00	New York Central Railroad		
Boston & Albany R. R., Springfield, Mass.	Terminal	Leased	30-day notice	98.65	New York Central Railroad		
Boston & Albany R. R., Springfield, Mass.	Land	Leased	30-day notice	7.50	New York Central Railroad		
Albany & Casco St., Worcester, Mass.	Terminal	Leased	9/3/44	170.00	Nathan Dworkin	(Subletted at \$125 a month)	

## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Out—J. J. McC. 1. Employment Contract—John J. McCarthy and McCarthy Freight System, Inc.—August 1, 1938, as amended June 6, 1940.

Out—J. J. McC. 2. Employment Contract—Charles F. McCarthy and McCarthy Freight System, Inc.—August 1, 1938, as amended June 6, 1940.

Out—J. J. McC. 3. Employment Contract—George E. Bertuccio and McCarthy Freight System, Inc.—August 1, 1938, as amended June 6, 1940, and June 2, 1941.

4. Tank Wagon Consumers Contract dated October 1, 1939, between Socony-Vacuum Oil Company, Incorporated, and McCarthy Freight System, Inc.

5. Truck and Bus Lubricants Contract dated October 1, 1939, between Socony-Vacuum Oil Company, Incorporated, and McCarthy Freight System, Inc.

6. Guarantee dated September 7, 1939, by McCarthy Freight System, Inc., to Socony-Vacuum Oil Company, Incorporated.

7. Guarantee dated September 7, 1939, by McCarthy Freight System, Inc., to The First National Bank of Boston.

8. Guarantee by McCarthy Freight System, Inc., to mortgagee of Southern New England Terminals, Inc.'s, Pittsfield Terminal.

9. Arrangement under which McCarthy Freight System, Inc., deposited \$5,000 with Massachusetts Bonding and Insurance Company in connection with bond furnished under Connecticut Workmen's Compensation Act.

10. Labor Union Contracts.

11. Guarantee by McCarthy Freight System, Inc., to mortgagee of Southern New England Terminals, Inc.'s, Worcester Terminal.

12. Guarantee now being executed by McCarthy Freight System, Inc., to Ware Savings Bank, Ware, Mass.

13. Guarantee now being executed by McCarthy Freight System, Inc., to Home National Bank, Brockton, Mass.

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**EXHIBIT H**

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto,<sup>1</sup> nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises or privileges null and void.

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**EXHIBIT**

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$16,832.50 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$16,832.50.

Nonrecurring Items:

Bonuses

\$15,832.50

Legal Expense

1,000.00

16,832.50

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**EXHIBIT J**

It is mutually agreed (as contemplated in and by paragraph Eighteenth as hereinafter modified) that the foregoing agreement (including exhibits) of which this exhibit is a part is changed,

<sup>1</sup> Except as now disposed of, or disclosed in Exhibit A, or fully covered by insurance.

and, to the extent hereinafter indicated the provisions thereof are superseded, as respectively set forth below:

**Paragraph Third:**

The date "May 31, 1941," in the second paragraph of this Paragraph is stricken out and the date "June 17, 1941," substituted therefor.

**Paragraph Sixth:**

1. So much of the first sentence of subdivision (3) of this Paragraph as follows the parenthetical clause therein is stricken out and there is substituted therefor the following: "Per week than being paid for the week ending February 1, 1941"; and there is added at the end of the second sentence of said subdivision the following: "except as disclosed in Exhibit F."

2. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

**Paragraph Eighteenth:**

The expression "main body of this agreement" in each of the two places where said expression appears in Paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

**Additional:**

1. There is inserted an additional paragraph as follows: "Second Party hereby agrees that it will, on request of any one or more of First Parties within thirty days after the closing, cause  
353 said company named on Exhibit A hereto promptly to sell to such First Party or First Parties to the extent that he is or they are the person or persons on whose life or lives such policies have been issued; and at the respective book values thereof as of the date of sale as reflected on the books of said company, any or all of the life insurance policies, on the lives of any of said parties, at the time of closing on said closing date owned by said company; provided, further, that notwithstanding any contrary provisions of this agreement the First Parties may cause or permit said company to make any such sales on the same basis prior to said closing."

2. There is inserted an additional paragraph as follows: "Second Party hereby agrees that within one year after the closing under this agreement it will cause each of the First Parties to be released and discharged of and from any and all obligations and liabilities (whether direct or contingent) to any person or persons in respect of the following:

(1) Collateral note by McCarthy Freight System, Inc., to Donald Finance Co. (approximately \$5,400);

(2) Unsecured note by McCarthy Freight System, Inc., to Home National Bank of Brockton (approximately \$3,000);

and cause to be released to each of the First Parties any collateral of any nature respectively furnished by them and securing any of the foregoing and, between the time of closing under this agreement and such release and discharge of obligations and liabilities and such release of collateral, to indemnify and save harmless each of the First Parties of and from said obligations and liabilities and any expense and loss in connection therewith."

354 3. There is inserted an additional paragraph as follows:

"It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party."

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### EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

### M. MORAN TRANSPORTATION LINES, INC.

(Name of Company)

NEW YORK

(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred.....	
Common.....	



1 Names of First Parties	2 Number of shares of preferred stock owned	3 Number of shares of common stock owned	4 Percentage of total number of preferred shares of Second Party to be received	5 Percentage of total number of common shares of Second Party to be received
Michael M. Moran Norman Joseph Amelia M. Moran Mamie Moran As Trustees: Michael M. Moran Norman Joseph Amelia M. Moran		250	To be supplied on or before closing date.	To be supplied on or before closing date.

Total number of shares issued and outstanding: 250 Common.

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**EXHIBIT E**

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement; of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

Lessor	Location real estate leased	Expiration date	Monthly rental
American Radiator Company	22 Roseville St., Buffalo, N. Y.	7/31/43	\$600.00
New York Central Railroad Co.	242 Larkin St., Buffalo, N. Y.	Monthly	50.00
John Wyroski	17 Roseville St., Buffalo, N. Y.	Monthly	4.17
Flora Smith	111 No. Geddes St., Syracuse, N. Y.	1/31/45	625.00
Abe E. Nathan	11 and 14 Mart Pl., Roch., N. Y.	3/31/45	100.00
Milton Lifset	Chrysler & Hudson St., Schen., N. Y.	6/30/49	275.00
Ft. Erie Warehouse & Dock Co.	1220 Saxafras St., Erie, Pa.	Monthly	90.00
Louis Minsker	168 Hopkins St., Jamestown, N. Y.	Monthly	50.00
Nicola Dardano	625 Catherine St., Utica, N. Y.	Monthly	135.00
American Salesbook Co.	612 Magee St., Elmira, N. Y.	5/31/44	150.00
Michael M. Moran	105 Molomery St., Birmingham, N. Y.	11/1/50	400.00
J. J. & R. H. Greenberg	2640 E. Lehigh St., Philadelphia, Pa.	8/1/41	250.00
Torsney & Moloney	508 W. 40th St., New York	Monthly	300.00

**REAL ESTATE OWNED**

Property at 1206 River St., Olean, N. Y. purchased by Company in April 1941 and including improvements made or to be made will cost approximately \$12,000.00.

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**EXHIBIT H**

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far

as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

Various claims all fully covered by insurance.

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### EXHIBIT J

1. It is mutually agreed by and between First Parties and Second Party that First Parties are to receive collectively, and Second Party is to issue in addition to all other common stock receivable by First Parties under the provisions of paragraphs third and fifth of the annexed agreement, twenty-nine thousand (29,000) shares of the common stock of Second Party.

2. Notwithstanding the provisions of subdivision (3) of paragraph sixth of the annexed agreement, it is expressly understood and agreed that Michael M. Moran and J. P. Altwater may, between April 30, 1941; and the closing date fixed in the annexed agreement, or the time of cancellation thereof as therein provided, continue to be paid salaries at the rates prevailing on November 1, 1940, with respect to each of them.

3. It is understood and agreed that the policies of life insurance covering any officer or stockholder of the company named on Exhibit A, which policies are payable to said company as beneficiary, will, upon request of the person or persons insured by said policies made within thirty (30) days after the closing date provided for in the annexed agreement, be transferred by Second Party to such person or persons upon receipt of the asset value of said policies as shown on the books of said company. It is further understood that prior to the closing date provided for in the annexed agreement, First Parties may cause the company named on said Exhibit A to transfer any such policy or policies on the same terms.

4. The word "modified" as used in the concluding paragraph of paragraph sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

5. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

6. It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## SOUTHEASTERN MOTOR LINES, INCORPORATED

(Name of Company)

## VIRGINIA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				None
Common				500

1	2	3	4	5
Names of First Parties	No. of shares of preferred stock owned	No. of shares of common stock owned	Percentage of total No. of preferred shares of Second Party to be received	Percentage of total No. of common shares of Second Party to be received
Clifford C. Brock	None	297.5	59.5%	59.5%
B. L. Huntsman	None	155	31.0%	31.0%
J. T. Howard	None	35	7.0%	7.0%
Vance P. Graham	None	12.5	2.5%	2.5%

Total No. of shares issued and outstanding, 500.

## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of

all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

Location	List of leases—Rental	Maturity date
Howard Street, Boone, N. C.	\$30.00 per month.	May 1, 1946, option for additional five years.
68 Commonwealth Ave., Bristol, Virginia.	\$600.00 per year.	October 15, 1948, option for additional ten years.
310 Franklin Street, Nashville, Tennessee.	\$720.00 per year.	November 30, 1940, option for additional one year.
2 Mi. east of Salem, Virginia.	\$15.00 per month plus 10% per annum for improvements (now \$22.00 per month).	April 1, 1945.
715 Chamberlain St., Knoxville, Tenn.	\$50.00 per month.	No written lease.
Winston-Salem, North Carolina.	\$12.50 per week.	Union Motor Freight Terminal; no written lease.
406-12 West 29th St., New York City.	\$600.00 per month.	June 1, 1946.

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

Contracts with White Motor Truck Co. and The Fruhoff Trailer Co. for the purchase of tractors and trailers not exceeding the sum of \$16,000.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such

action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

Suits pending:

Gertrude Taylor Jones v. Southeastern Motor Lines, Incorporated, suit pending in Circuit Court of Montgomery County, Virginia	\$10,000.00
C. T. Flowers v. Southeastern Motor Lines, Incorporated, suit pending in the Circuit Court of Montgomery County, Virginia	418.92
Grace Jackson Flowers v. Southeastern Motor Lines, Incorporated, suit pending in the Circuit Court of Montgomery County, Virginia	10,000.00

All of the above are fully protected by insurance as set forth in Exhibit G.

The operating rights of Southeastern Motor Lines, Incorporated, between Knoxville, Tennessee, and Nashville, Tennessee, have not as yet been approved by the Interstate Commerce Commission.

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EXHIBIT I

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$15,475.00 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$15,475.00.

Nonrecurring Items:

1. Extraordinary legal fees	\$4,000.00
2. Bonuses to employees and officers	11,475.00

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EXHIBIT J

First parties have asserted, and second party recognizes that the cost to the company named on Exhibit A of substantial portions of the equipment presently owned by that company is below the fair market value thereof, and accordingly the net worth of said company as shown by its books is less, insofar as said equipment is concerned, than its true net worth. It is accordingly expressly understood and agreed that First Parties are to receive



collectively and Second Party is to issue in addition to all other common stock receivable by said First Parties under the provisions of paragraphs Third and Fifth of the annexed agreement, two thousand (2,000) shares of the common stock of Second Party.

In view of the foregoing, it is further expressly understood and agreed that no adjustments with regard to depreciation on the revenue equipment (trucks, trailers, and tractors) of the company named on Exhibit A shall be made in determining either the adjusted net worth or the adjusted net profits of said company.

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

NOTE.—The insurance carried and paid for by Southeastern Motor Lines, Incorporated, on the life of Clifford C. Brock, may at any time, at his election, be taken over for his sole benefit upon paying to the company named on Exhibit A the cash surrender value of the policy or policies, as the case may be, as of the time such taking over occurs.

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## -3- EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## TRANSPORTATION, INCORPORATED

(Name of Company)

## GEORGIA

(State of Incorporation)

Class or classes of stock				Total number of shares authorized
Preferred				25,000
Common				
1	2	3	4	5
Names of First Parties	No. of shares of preferred stock owned	No. of shares of common stock owned	Percentage of total No. of preferred shares of Second Party to be received	Percentage of total No. of common shares of Second Party to be received
A. S. Clay, Trustee		25,000 common		100%

Total No. of shares issued and outstanding, 25,000 Common.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## NO REAL ESTATE OWNED

Lease contract—Name	Location	Monthly rental	Expiration date
Rankin-Whitten	Atlanta, Ga.	\$155.00	6/30/42
Pittman Const. Co.	" "	200.00	90 days
Georgia Motor Express	" "	100.00	10 days
Centennial Realty Co.	New Orleans, La.	70.00	6/30/41
J. W. Milner	Gulfport, Miss.	35.00	8/30/41
Pascagoula Ice & Coal Co.	Pascagoula, Miss.	50.00	3/20/42
Forman & Foreman Co.	Mobile, Ala.	75.00	10/31/41
Citizens & Peoples National Bank	Pensacola, Fla.	45.00	90 days
Bernice Stanton	Flomaton, Ala.	30.00	11/30/42
M. D. Taylor	Andalusia, Ala.	25.00	3/31/43
Crampton Lbr. Co.	Montgomery, Ala.	70.00	8/26/42
E. A. Screws	Opelika, Ala.	20.00	No Lease
L. L. Echols	Greenville, S. C.	100.00	4/1/43
C. W. Johnson	Spartanburg, S. C.	45.00	3/19/43
Barnwell Bros.	Charlotte, N. C.	100.00	10/7/41
R. L. Brinson	High Point, N. C.	40.00	No Lease
Revolution Cotton Mills	Greensboro, N. C.	100.00	12/31/41
Motor Transit	Winston-Salem, N. C.	40.00	30 Days
Pure Oil Co.	Asheville, N. C.	175.00	5/1/42
Charles Hickey	Knoxville, Tenn.	80.00	30 Days
J. P. Upchurch	Atlanta, Ga.	50.00	60 Days
Pure Oil Co. of Carolina	Gastonia, N. C.	60.00	3/21/42
Cannon Bros.	Dillsboro, N. C.	10.00	30 Days
Kingsport Transfer Co.	Kingsport, Tenn.	15.00	10 Days
Parts & Service Co.	Anderson, S. C.	15.43	No Lease
J. H. Service	Gaffney, S. C.	12.50	No Lease
G. W. Woodruff	Winder, Ga.	12.50	90 Days
Peoples Transfer Co.	Johnson City, Tenn.	7.50	No Lease
G. C. Steindorf	Georgiana, Ala.	10.00	90 Days

## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

Caldwell & Cartuathan v. Transportation, Inc. U. S. Dist. Court, Montgomery, Ala. (Wages & Hours) (No Liability believed to exist).

Barker v. Pittmann (Recovery should not exceed \$1,000). Circuit Courts of Alabama.

Claims not listed are fully covered by insurance.

## EXHIBIT J

1. First Party and Second Party have agreed that the application of the provisions of paragraph Third of the annexed contract would not result in the issuance to First Party of any shares of preferred stock of Second Party and would not result in the issuance to First Party of a number of shares of common stock which would fairly represent the earning capacity of the company named on Exhibit A annexed hereto. It is accordingly expressly understood and agreed that paragraphs Third (except as provided in subdivision 2 of this Exhibit J) and Fourth are hereby deleted, and First Party agrees to exchange all of the issued and outstanding capital stock shown on Exhibit A for a total of 5,500 shares of common stock of Second Party, to be issued to such persons and in such amounts as the Second Party shall be directed by the persons for whom the First Party is acting, such direction over the signatures of such persons to be furnished by the First Party within sixty days after execution and delivery of this agreement. All of said 5,500 shares are to be fully paid, nonassessable, and free and clear of any and all liens and encumbrances whatsoever. Wherever in the annexed agreement reference is made to paragraph Third or any part thereof, said reference shall be deemed to be to the provisions of this Exhibit J.

2. It is hereby represented that the net deficit of the company, excluding all values for intangibles, as of April 30, 1941, is \$40,000. The books of the company are to be audited in accordance with the provisions of paragraph Third where applicable, and if upon such

audit it should be found that the net deficit is either increased or decreased by more than \$5,000, less or additional common stock shall be delivered to the First Party of a par value equal to 5% of the amount by which such increase or decrease exceeds \$5,000.

3. It is agreed by the First Party that he will secure an extension of the payment of any remaining balance of any unsecured debt which is now and has been due and owing for a period of six months or longer and which is in the amount of \$5,000 or more, for a period of six months from the closing date of this agreement as defined in paragraph Fifteenth, and the First Party agrees to furnish written commitments to this effect from the creditors to whom such debts are owing within sixty days following the date of the execution of this agreement.

4. As an exception to the provisions of paragraph (3) of paragraph Sixth, the First Party may continue in its employ W. P. Moore, who has been in the employ of the company for a period of less than six weeks and who is now an officer. Said employee and officer shall be employed on a monthly basis only and shall receive a salary not exceeding \$400 monthly.

5. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

6. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Eighteenth of the annexed agreement is deemed to include any exhibit or exhibits.

7. It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

369 8. The audit provided for in subdivision (2) of this Exhibit J shall be made by Harry J. Reicher, and his findings shall be final and conclusive on all parties hereto, unless within fifteen (15) days after mailing of said findings by Harry J. Reicher to the designee provided for herein, said designee shall mail to all of the designees under the contracts described in paragraph Fourteenth hereof, at the addresses set forth in their respective contracts, notice that he disputes said determinations, or any of them, with a statement of his reasons therefor, and unless two-thirds of all said designees, including the one provided for herein, shall revise the determinations, or any of them, made by Harry J. Reicher and mail notice of their action to the designee provided for herein. Should at least two-thirds of said designees fail to meet, hear, and reach a vote upon such disputed determinations within fifteen days after such notice of dispute is mailed to them, performance of this agreement shall, upon the written election of First Parties, be suspended until at least two-thirds

of said designees shall have met, heard the dispute with regard to such determinations, and reached a vote thereon; but all determinations by Harry J. Reicher shall remain in force unless upon such vote it is revised by the vote of two-thirds of all said designees, including the one provided for herein. If such determinations, or any of them, are revised by two-thirds of said designees, such revision shall, insofar as it affects and with respect to the items so affected, supersede his determinations and shall be final, binding, and conclusive on all parties, unless within ten days after such revision, the designee provided for herein shall elect to accept the original determinations by Harry J. Reicher, in which event said original determinations shall be final, binding, and conclusive on all parties.

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## EXHIBIT A

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement. (See "Note 1" at the end of Exhibit A.)

## BARNWELL WAREHOUSE AND BROKERAGE CO.

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred, Par Value, \$100.00	
Common, Par Value, \$100.00	500



1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party to be received	5 Percentage of total No. of common shares of Second Party to be received
R. W. Barnwell	12	1	5.04	5
Willard Smith Barnwell	84	1	10.22	5
John H. Barnwell		1	4.18	5
Deloris Morrow Barnwell	36	1	6.76	5
James A. Barnwell	48	2	11.79	10
Hannah Bomse		2	8.37	10
William R. Lacey	48	1	7.62	5
Arthur D. Crowe		1	4.18	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Willard Holt Barnwell		1	4.18	5
371 Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Joseph Clarendon Barnwell		1	4.18	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Eleanor Smith Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Betty Lynn Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Richard Brantley Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Julian Forrest Barnwell		1	4.19	5
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Dorothy Lea Barnwell		2	8.37	10
Wachovia Bank and Trust Company, Trustee Under Agreement Dated May 10, 1940, for the Benefit of Robert Alexander Barnwell		2	8.37	10
Total No. of shares issued and outstanding	228	30		

NOTE NO. 1.—The trustee in each of the eight trusts listed on this Exhibit A is the legal owner of record of the respective shares indicated and is empowered to dispose of the same as provided herein but is not the beneficial owner.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

	Total cost	Res. for depreci.	Book value	Incumbrances or liens	
				Amount	Description
Real estate owned					
Burlington	\$15,476.08	\$1,304.54	\$14,271.55	\$10,500.00	Mortgage
Real Estate Leased					
None					

## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

The company named on Exhibit A has no executory contracts except with its employees, none of which extend beyond December 31, 1941.

## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

So far as known to first parties, there is no pending or threatened litigation against the company named on Exhibit A.

## EXHIBIT J

1. In lieu of applying the provisions of paragraph Third of the annexed contract to determine the number of shares of common and preferred stock of Second Party to be received by First Parties collectively, it is understood and agreed that First Parties are to receive collectively in exchange for all of the issued and outstanding capital stock shown on Exhibit A annexed hereto of the company named on said Exhibit, 1,390 shares of the preferred stock and 17,800 shares of the common stock of Second Party.

All of said shares, both preferred and common, are to be fully paid and nonassessable, and free and clear of any and all liens and encumbrances whatsoever. The provisions of paragraph Fourth of the annexed agreement shall apply to the distribution of the aforesaid preferred and common stock.

It is further understood and agreed that after audit of the books and records of the company named on Exhibit A by Harry J. Reicher (to be completed as soon after the execution hereof as practicable), the total number of shares of preferred stock to be received by First Parties collectively as stated above, may be increased or decreased by Harry J. Reicher up to 25% more or 25% less than the total stated above, and the number of common shares to be received by First Parties collectively as stated above, may likewise be increased or decreased by Harry J. Reicher within the same limits. Such increase or decrease of the total number of preferred or common shares, or both, shall become effective upon the mailing by Harry J. Reicher of notice thereof to the designees provided for in the main agreement.

The determination by Harry J. Reicher as to whether or not the total number of preferred shares and common shares stated above, or either or both, shall be increased or decreased within the limits above provided, shall be made by Harry J. Reicher in his sole discretion, and shall be conclusive and binding upon all parties hereto.

2. Wherever reference is made in paragraph Twelfth of the annexed agreement to the provisions of the main agreement as to designee, such reference shall include reference to the provisions of Exhibit J of the main agreement on that subject.

3. The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

4. The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

5. It is understood that B. M. Seymour has executed, or is about to execute, a subscription agreement for certain shares of the common stock of Second Party.

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**EXHIBIT A**

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and

truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

## BROWN EQUIPMENT &amp; MFG. COMPANY, INC.

(Name of Company)

## NORTH CAROLINA

(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred	
Common	1,000

1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party to be received	5 Percentage of total No. of common shares of Second Party to be received
H. D. Horton		975 <sup>1</sup> / <sub>20</sub>	100%	100%
J. A. Sutton		4 <sup>1</sup> / <sub>20</sub>		
J. L. Brown		4 <sup>1</sup> / <sub>20</sub>		
J. N. Johnson		4 <sup>1</sup> / <sub>20</sub>		
J. D. Klutzz		4 <sup>1</sup> / <sub>20</sub>		
C. A. Cochran		4 <sup>1</sup> / <sub>20</sub>		

Total No. of shares issued and outstanding, 1,000

These shares of stock have been endorsed in blank to Mr. H. D. Horton.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

278 **BROWN EQUIPMENT AND MANUFACTURING COMPANY,  
INCORPORATED**

**SCHEDULE OF LEASES APRIL 30, 1941**

Location	Street address	Lessor	Lessor's address	Monthly rental	Expira- tion date
Charlotte, N. C.	801-S. Summit Ave	Conner Realty Company.	Charlotte, N. C.	\$300.00	8-31-44

Remarks: Agreement in Lease to extend expiration date beyond 5-year period for such additional time as is necessary to complete addition to building.

(Initialed:) HDH.

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**EXHIBIT H**

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

**NONE**

Any actions, if any, not listed, are fully covered by insurance.

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**EXHIBIT I**

**BROWN EQUIPMENT & MFG. COMPANY, INC.**

First Parties represent, warrant and agree that all items listed below were actually expended by, or became accrued liabilities of, the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties



under subdivision (2) of paragraph Third of this agreement, the sum of \$2,000,000 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provision for taxes at the 1940 rates on the said sum of \$2,000.00.

**Nonrecurring Item:**

1. Cost of dye written off ----- \$2,000.00

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**EXHIBIT J**

The word "modified" as used in the concluding paragraph of paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

The expression "main body of this agreement" in each of the two places where said expression appears in paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

H. D. Horton represents and warrants that he is the owner and holder of the share of stock listed on Exhibit "A" under the name of J. N. Johnson.

It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party.

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**EXHIBIT A**

First Parties represent and warrant that the following is a full and correct description of all of the authorized as well as all of the issued and outstanding capital stock of the company named hereon; that the ownership of said stock is accurately and truthfully listed hereon; that all of the issued shares of stock are fully paid and nonassessable; that all of the authorized as well as all of the issued and outstanding shares of stock are free and clear of all liens, encumbrances, pledges, attachments, or any other claims, except as may otherwise be stated hereon; that there are no agreements, either written or oral, concerning the sale, transfer, or other disposition of any of said stock or concerning the voting rights or any other rights pertaining thereto, except as noted hereon; that each of First Parties is of lawful age, is both the legal and beneficial owner<sup>1</sup> of the respective shares indicated, and is entitled and empowered to dispose of said shares in the manner provided in the annexed agreement:

<sup>1</sup> Except that shares herein indicated as held by Trustees are not beneficially owned by them.

SOUTHERN NEW ENGLAND TERMINALS, INC.  
(Name of Company)MASSACHUSETTS  
(State of Incorporation)

Class or classes of stock	Total number of shares authorized
Preferred.....	300
Common.....	

1 Names of First Parties	2 No. of shares of preferred stock owned	3 No. of shares of common stock owned	4 Percentage of total No. of preferred shares of Second Party <sup>1</sup> to be received <sup>2</sup>	5 Percentage of total No. of common shares of Second Party <sup>1</sup> to be received <sup>2</sup>
1. Isabel J. McCarthy		134	44 <sup>2</sup> / <sub>3</sub> %	44 <sup>2</sup> / <sub>3</sub> %
2. Kathleen E. McCarthy		96	22 <sup>2</sup> / <sub>3</sub> %	22 <sup>2</sup> / <sub>3</sub> %
3. George E. Bertucio		36	12%	12%
4. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Elizabeth Jane Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
5. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Mary Louise Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
343 6. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Robert Charles Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
7. Alexander W. Chisholm and Edwin F. Weber, Trustees under Indenture of Trust dated June 6, 1940, for the Benefit of Louise M. Bertucio and Others		16	5 <sup>1</sup> / <sub>3</sub> %	5 <sup>1</sup> / <sub>3</sub> %
Total No. of shares issued and outstanding	None	300	100%	100%

<sup>1</sup> To be received by First Parties collectively.  
<sup>2</sup> By this First Party.

384 As to all items: said shares of common stock of Southern New England Terminals, Inc., have applicable restrictions on transfer set forth in the minutes of stockholders and Directors of said company. All parties concerned are bound by agreement to waive such restrictions for the purpose of consummation of this agreement.

As to item 3: 19 of said shares are covered by an option dated August 22, 1939, to John J. McCarthy and Charles F. McCarthy, jointly, and the survivor, and the executors, administrators, or assigns of such survivor. All parties concerned are bound by agreement to release said option for the purpose of consummation of this agreement.

As to the remaining 26 of the shares in item 3, and as to items 4, 5, 6, and 7: said shares are covered by an option dated June 6, 1940, to Southern New England Terminals, Inc., which is bound

by agreement to release said option for the purpose of consummation of this agreement.

As to items 3, 4, 5, 6, and 7: there are, as to said shares of common stock (together with certain dividends thereon as provided in outstanding dividend orders which all parties concerned are bound by agreement to release for the purpose of consummation of this agreement) of Southern New England Terminals, Inc., possible claims following: Claims of McCarthy Freight System, Inc., under its note dated August 1, 1938, as increased and/or decreased to date. McCarthy Freight System, Inc., is bound to release said collateral upon substitution of stock of Second Party upon consummation of this agreement.

As to each of items 4, 5, 6, and 7: upon the creation of the trust the Trustees thereunder acquired "All the right, title, and interest of George E. Bertucio in and to" the respectively above-listed 16 shares of common stock of Southern New England Terminals, Inc., and also 400 shares of common stock of McCarthy Freight System, Inc.

It is understood and agreed that the disclosures recited above shall not be deemed exceptions to the representations and warranties made in this Exhibit A.

George E. Bertucio agrees—withstanding the limitations of liability set forth in Paragraph Eleventh of the annexed agreement—to indemnify the Second Party against, and save the Second Party harmless from, any and all liens, encumbrances, pledges, attachments on, or any other claims with respect to, the stock listed in items 2, 6, 7, 8, and 9 of this Exhibit A.

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## EXHIBIT E

First Parties represent and warrant that there are listed below a true, accurate, and complete statement of all real estate owned by the company named on Exhibit A annexed hereto at the date of this agreement, of all encumbrances and liens thereon, and of all real estate leased by said company, showing the location, monthly rentals, expiration dates, and other details with regard to such leased premises:

## OWNED

Location of property	Property	Description	Encumbrances or liens	Amount as 12/31/40
Olney and Wales Sts., Taunton, Mass.	Land and Building	General offices and Terminal	Mortgage	\$18,000.00
Baltic Road & Ballard St., Worcester, Mass.	Land and Building	Terminal	Mortgage	32,000.00
4th St., Pittsfield, Mass.	Land and Building	Terminal	Mortgage	28,500.00
Oak St., West of Bath St., Providence, R. I.	Land and Building	Terminal	Mortgages	41,999.96
Memorial Ave., West Springfield, Mass.	Land			

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## EXHIBIT F

First Parties represent and warrant that the following is a true and complete list of all executory contracts, including but not limited to employment contracts, to which the company named on Exhibit A annexed hereto is a party, and which are in-existence at the date of this agreement, and that said company has no other such contracts, except such as have been made in the ordinary course of business of the company and as are necessary or useful in the conduct of its business. First Parties further represent and warrant that all of the contracts listed thereon are considered advantageous to said company and are not unduly burdensome.

First Parties agree as to any contracts set forth below, which are identified by the word "out" and initialed by the designee of First Parties, and Second Party, that such contract will be eliminated as an obligation of said company on or before the closing date fixed in the annexed agreement.

1. Construction contract between Southern New England Terminals, Inc., and Walter H. Barker, Inc., executed February 18, 1941, for general offices at Taunton, Mass.

2. Construction contract between Southern New England Terminals, Inc., and Ernest J. Carlson, Inc., for Springfield Terminal executed May 23, 1941; also obligation for architect's fees in this connection.

3. Agreement to purchase house and lot on Livingston Ave., Pittsfield, Mass., by the Southern New England Terminals, Inc.

4. Agreement to purchase house and lot on New Hampshire Ave., Pittsfield, Mass., by the Southern New England Terminals, Inc.

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## EXHIBIT H

First Parties represent and warrant that the following is an accurate and complete list of all pending or threatened litigation against the company named on Exhibit A annexed hereto so far as known to said company and/or First Parties. First Parties further represent and warrant that no action at law or in equity and no other proceeding whatsoever has ever been instituted against the company named on Exhibit A annexed hereto, nor is any such action or proceeding now pending to dissolve it or to declare its corporate rights, powers, franchises, or privileges null and void.

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## EXHIBIT I

First Parties represent, warrant, and agree that all items listed below were actually expended by or became accrued liabilities of

<sup>1</sup> Except as now disposed of, or fully covered by insurance.

the company named on Exhibit A annexed hereto during the twelve months' period ending April 30, 1941, and that as to the items below under the column "Nonrecurring Items," neither said items nor any items similar or corresponding thereto will be or become, in whole or in part, obligations of said company at any time after the closing date of this agreement.

In consideration of the foregoing representations, warranties, and agreements, it is agreed that in determining the amount of common stock of Second Party to be received by First Parties under subdivision (2) of paragraph Third of this agreement, the sum of \$3,000.00 shall be added to the adjusted net profits of said company as determined by Harry J. Reicher, less provisions for taxes at the 1940 rates on the said sum of \$3,000.00.

Nonrecurring Items:

Officers' Bonuses

\$3,000.00

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#### EXHIBIT J

It is mutually agreed (as contemplated in and by Paragraph Sixteenth as hereinafter modified) that the foregoing agreement (including exhibits) of which this exhibit is a part is changed, and, to the extent hereinafter indicated the provisions thereof are superseded, as respectively set forth below:

#### Paragraph Third:

The date "May 31, 1941," in the second paragraph of this Paragraph is stricken out and the date "June 17, 1941" substituted therefor.

#### Paragraph Sixth:

The word "modified" as used in the concluding paragraph of Paragraph Sixth of the annexed agreement shall be deemed to mean "waived in whole or in part."

#### Paragraph Sixteenth:

The expression "main body of this agreement" in each of the two places where said expression appears in Paragraph Sixteenth of the annexed agreement is deemed to include any exhibit or exhibits.

#### Additional:

1. There is inserted an additional paragraph as follows: "Second Party hereby agrees that within one year after the closing under this agreement it will cause each of the First Parties to be released and discharged of and from any and all obligations and liabilities (whether direct or contingent) to any person or persons in respect of the following:

(1) Second mortgage note dated September 7, 1939, by McCarthy Freight System, Inc., to Socony-Vacuum Oil Company, Incorporated (approximately \$15,000).



(2) First mortgage note dated September 7, 1939, by McCarthy Freight System, Inc., to The First National Bank of Boston (approximately \$22,500).

and cause to be released to each of the First Parties any collateral of any nature respectively furnished by them and securing any of the foregoing and, between the time of closing under this agreement and such release and discharge of obligations and liabilities and such release of collateral, to indemnify and save harmless each of the First Parties of and from said obligations and liabilities and any expense and loss in connection therewith."

2. There is inserted an additional paragraph as follows: "It is understood that B. M. Seymour has executed or is about to execute a subscription agreement for certain shares of the common stock of Second Party."

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## EXHIBIT C-1c

STATEMENT CONTAINING COPY OR EXPLANATION OF ANY OTHER MATERIAL DIFFERENCES BETWEEN THE AFORESAID HORTON AND CONGER CONTRACTS AND THE CONTRACTS OF ANY OTHER OF THE AFORESAID CARRIER AND NONCARRIER COMPANIES

Except as set forth in Exhibit C-1b herein, or otherwise set forth in this application, the only material differences between the aforesaid Horton and Conger contracts and the contracts of any other of the aforesaid carrier and noncarrier companies are as follows:

With regard to Exhibit B of said contracts, relating to interests in any other motor, rail, or water carrier, the stockholders of M. Moran Transportation Lines, Inc., represent and warrant that they have no interest, direct or indirect, in any other motor, rail, or water carrier except the following companies:

Pacific Transportation Lines, Inc.

Dregalla Trucking Co.

Frontier Package Delivery Inc.

With regard to Exhibit G of said contracts, relating to the insurance coverage of the various companies, the kind and amount of coverage vary for the different companies, but in every instance the nature and amount fully comply with the requirements of the Commission, and certificates of such coverage are on file with the Commission.

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## EXHIBIT C-3

## OPINION OF COUNSEL

It is the opinion of the undersigned counsel that the proposed transactions described in the within application comply with the

requirements of law and will be legally authorized and valid if approved by the Commission.

CLAUDE A. COCHRAN.

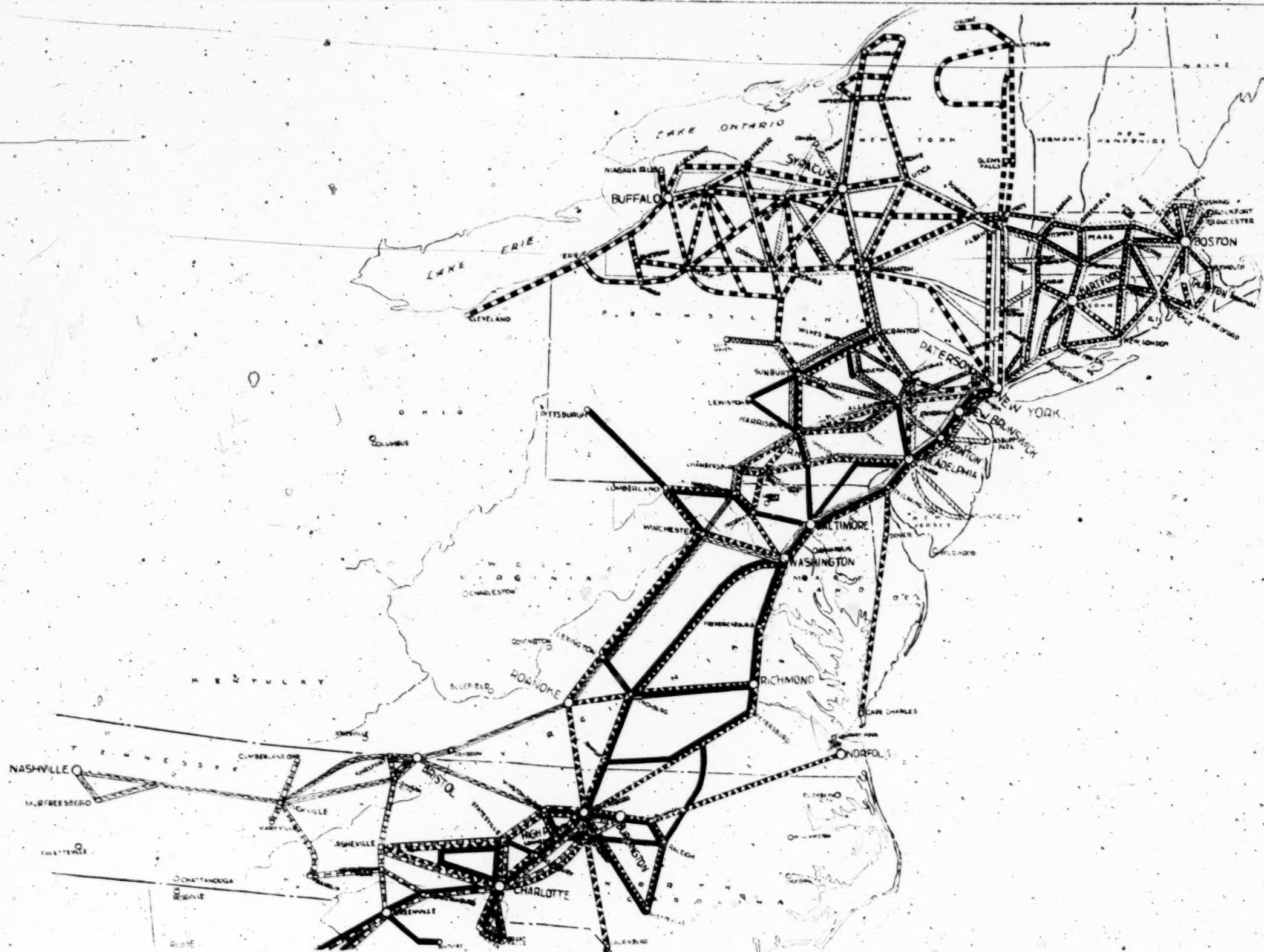
Claude A. Cochran.

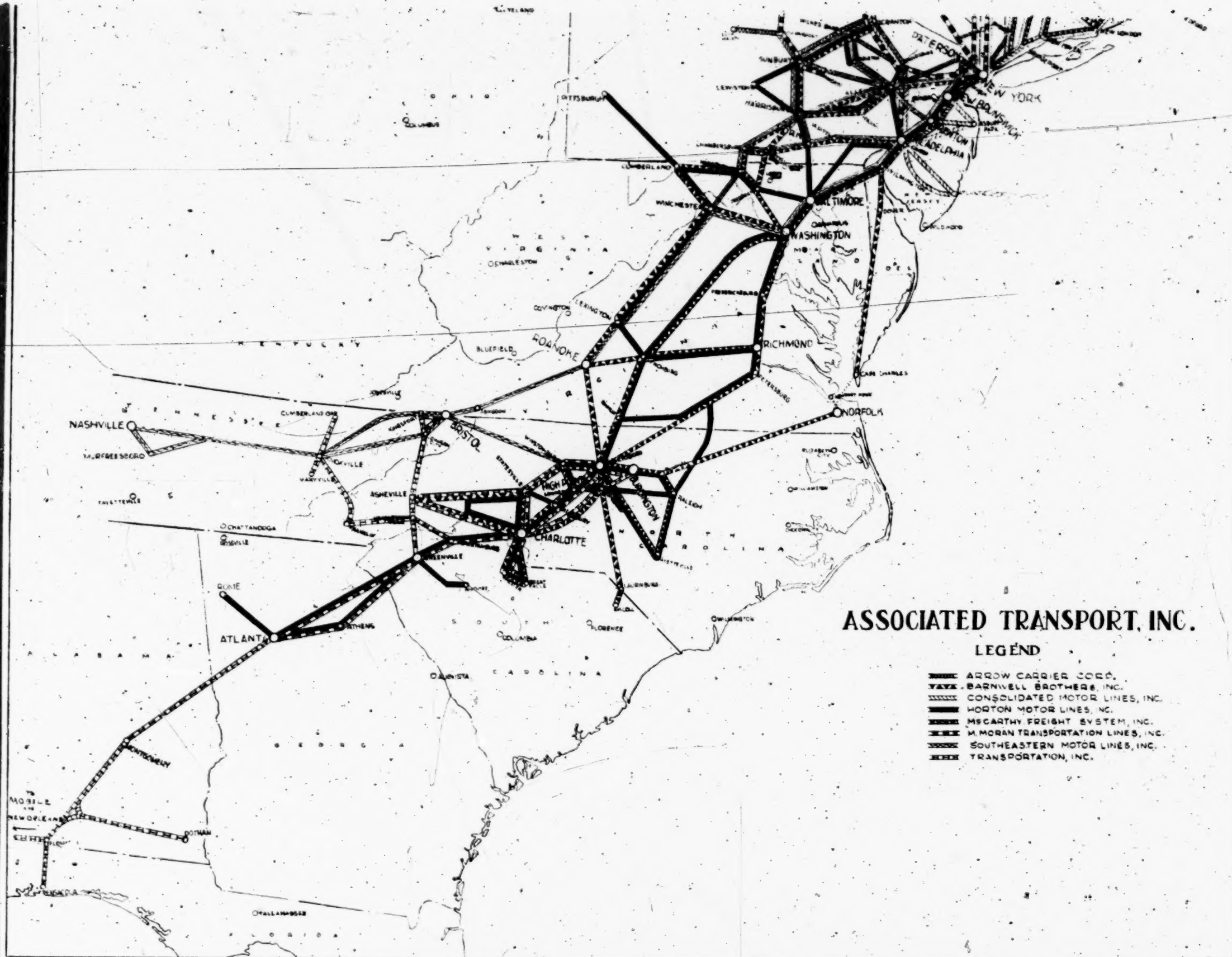
HUGH M. JOSELOFF.

Hugh M. Joseloff.

MORTIMER ALLEN SULLIVAN.

Mortimer Allen Sullivan.





## ASSOCIATED TRANSPORT, INC.

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MCLEAN TRUCKING CO., INC., ET AL.

## Schedule of Real Property To Be Acquired From the Companies Included in I. C. C. Application and Encumbrances Thereon as of April 30, 1941

Company	Description of property	Location of property	Use: T—Terminal, S—Shop, O—Office, N—Non-operating	Date acquired	Total cost	Mortgage payable				
						Original amount 4/30/41	Amount owing 4/30/41	Interest rate	Maturity date	Amortization of mortgages
Consolidated Motor Lines, Inc. (Conn.)	None									
Consolidated Motor Lines, Inc. (Mass.)										
United Arthur Express, Inc.	Land & Bldg Building	E. Hartford, Conn.	T	1938	\$25,786.17	\$14,000.00	\$0,300.00	6%	Demand	\$200 per month.
United Sales & Mfg. Corp.	Land & Bldg	Cambridge, Mass.	T	1938	35,272.10	19,000.00	5,400.00	6%	11/15/42	\$300 per month.
McCarthy Freight System, Inc.	Land & Bldg	Worcester, Mass.	T	1941	49,062.17	32,000.00	31,200.00	5%	Demand	\$800 quarterly.
Southern New England Terminals, Inc.	Land & Bldg	Taunton, Mass.	T	1939	32,626.68	18,000.00	18,000.00	4%	Demand	None.
Southern New England Terminals, Inc.	Land & Bldg	Pittsfield, Mass.	T	1940	55,781.35	30,000.00	27,500.00	8%	Demand	\$250 per month.
Southern New England Terminals, Inc.	Land & Bldg	Providence, R. I.	T	1939	75,055.31	50,000.00	40,333.28	5%	Demand	\$416.67 per month.
Southern New England Terminals, Inc.	Bldg. in course of construction	Taunton, Mass.	O	1941*	5,817.67					
M. Moran Transportation Lines, Inc.	Land & Bldg	Olean, N. Y.	T	1941	12,300.26					
Horton Motor Lines, Inc.	None									
Brown Equipment & Mfg. Co.	Land & Bldg	Charlotte, N. C.	T & O	1938	121,612.75					
Conger Realty Co., Inc.	Land & Bldg	Charlotte, N. C.	S	1939	35,731.25					
Conger Realty Co., Inc.	Land & Bldg	Baltimore, Md.	S	1938	78,213.99					
Conger Realty Co., Inc.	Land & Bldg	Atlanta, Ga.	T	1939	55,607.48					
Conger Realty Co., Inc.	Land & Bldg	Philadelphia, Pa.	T	1939	70,902.01					
						24,000.00	165,000.00	4%	12/1/53	\$15,000 quarterly



Conover Realty Co., Inc.	Land & Bldg	Pittsburgh, Pa.	1939	70,799.33						\$250 quarterly
Barnwell Brothers, Inc.	Land & Bldg	Shelby, N. C.	1937	6,662.92						\$5,000 semiannual
Barnwell Brothers, Inc.	Land & Bldg	Charlotte, N. C.	1938	37,351.63	3,000.00	2,750.00	6%	12/22/43		
Barnwell Brothers, Inc.	Land & Bldg	Charlottesville, Va.	1939	14,249.41						
Barnwell Brothers, Inc.	Land & Bldg	Lynchburg, Va.	1939	17,972.05						
Barnwell Brothers, Inc.	Land & Bldg	Burlington, N. C.	1939	105,996.01	50,000.00	35,000.00	4 1/2%	9/30/44		
Barnwell Brothers, Inc.	Land & Bldg, in course of construction.	Philadelphia, Pa.	1941	15,241.11						
Barnwell Brothers, Inc.	Land	High Point, N. C.	1939	2,542.75						
Barnwell Brothers, Inc.	Land	Martinsville, Va.	1941	800.60						
Barnwell Warehouse & Brokerage Company	Land & Bldg	Burlington, N. C.	1938	15,476.09	7,000.00	2,500.00	6 1/2%	6/1/42		\$200 quarterly
Southwestern Motor Lines, Inc.	None				8,000.00	8,000.00	6%	6/1/46		\$500
385 Arrow Carrier Corp.	None									
Arrow Carrier Corp.	Land (Brick Bldg)	Paterson, N. J.	1925-1936	39,511.77						
Arrow Carrier Corp.	Land (Building)	Paterson, N. J.	1925-1936	712,942.49						
Arrow Carrier Corp.	Land & Brick Garage	Paterson, N. J.	1/23/34	3,000.00	13,000.00	12,000.00	6%	11/1/41		\$250.00 semiannually
Arrow Carrier Corp.	Land	Paterson, N. J.	1933	122,144.85						
Arrow Carrier Corp.	Land	Paterson, N. J.	2/26/40	18,264.73						
Arrow Carrier Corp.	Land	Paterson, N. J.	11/1/39	2,000.00						
Arrow Carrier Corp.	Land	Paterson, N. J.		5,000.00						
Arrow Carrier Corp.	Metal Garage	Paterson, N. J.		5,317.26						
Arrow Carrier Corp.	Building	Paterson, N. J.	1939-1940	30,832.20						
Arrow Carrier Corp.	Land	Allentown, Pa.	6/16/27	1,553.00						
Arrow Carrier Corp.	Land	Allentown, Pa.	8/29/33	21,699.60						
Arrow Carrier Corp.	Building on leased land	Allentown, Pa.	1932-1939	5,000.00						
Arrow Carrier Corp.	Land	Danville, Pa.	1930	46,116.93						
Arrow Carrier Corp.	Land	Scranton, Pa.	9/1/27	4,138.26						
Arrow Carrier Corp.	Land			2,596.28						

## EXHIBIT C-7

## ASSOCIATED TRANSPORT, INC.

Proforma Consolidated Balance Sheet as of April 30, 1941, Giving Effect to the Stock Sold as of July 22, 1941, and to the Consummation of the Transaction Proposed

## ASSETS

Current Assets:	
Cash	\$2,066,178.76
Working Funds	70,374.38
Special Deposits	19,472.26
Notes Receivable	53,227.33
Accounts Receivable	\$1,592,573.37
Less Reserve for Uncollectible Revenues	42,819.43
Materials and Supplies	1,549,753.94
Other Current Assets	635,978.11
Total Current Assets	31,822.80
	4,426,807.58

## Tangible Property:

Carrier Operating Property	\$9,087,598.52
Less Res. for Depreciation	3,759,314.11
Non-Carrier Operating Property	5,328,284.41
Less Res. for Depreciation	119,178.57
	16,252.97
Total Tangible Property	102,925.60
	5,431,210.01

## LIABILITIES AND CAPITAL

Current Liabilities:	
Accounts Payable	\$1,252,972.26
Notes Payable	288,160.44
Wages Payable	208,128.61
C. O. D.'s Unremitted	23,834.53
Taxes Accrued & Payable	696,446.97
Other Accrued Liabilities	142,802.77
Total Current Liabilities	2,612,345.58
Advances Payable—Associated Companies & Others	154,220.50
Equipment & Other Long Term Obligations:	
Equipment Obligations	\$1,012,479.17
Other Long Term Obligations	361,174.03
Deferred Credits	1,373,653.20
Reserves for Injuries, Loss, and Damage	47,735.27
	65,563.69
Total Liabilities & Reserves	4,253,518.64
Capital Stock:	
Preferred Stock — 55,497 shares, par value \$100 each	\$5,549,700.00
Less Treasury Stock — 1,262 shares	126,200.00
Common Stock — 715,959 shares, par value \$1.00 each	715,959.00
Less Treasury Stock — 16,296 shares	16,296.00
	5,423,500.00
	699,603.00

Intangible Property:		
Organization Expense.....	9,000.00	
Investments and Advances.....	148,140.69	
Prepayments—Other Deferred Debits.....	885,276.96	
	<hr/>	
	9,000.00	
Minority Interest:		
In Arrow Carrier Corp.—260 outstanding shares of Preferred Stock, par value \$100 each.....	26,000.00	
In Horton Motor Lines, Inc.—Class "A" Pfd. stock, par value \$20 each:		
2,666 shares Out-		
standing.....	\$53,320.00	
276 shares subscribed.....	5,320.00	
	<hr/>	
	58,840.00	
Total Capital Stock.....		6,208,003.00
Unappropriated Surplus:		
Unearned Surplus arising out of consolidation.....	438,913.60	
Total Liabilities and Capital.....		<hr/>
		10,900,435.24
Total Assets.....		<hr/>
		10,900,435.24

## EXHIBIT D

Facts and circumstances which applicant relies upon to warrant approval of the proposed transaction:

The proposed transactions will result in a more economical, more efficient and speedier service to the public. More scientific and extensive maintenance will be established, thereby increasing safety of operations and reducing accident frequency, and decreasing delays from road failures of equipment.

There will also result greater flexibility in operations, particularly as concerns through movement of freight between all points served by the respective carriers and the use and concentration of equipment to meet emergency needs. Greater financial stability, increased purchasing power, and increased pay load factors will also result.

A sounder and more stable transportation system will be evolved, relations with public regulatory bodies and the shipping public will be simplified and expedited, and such transportation system will be more readily available and of greater utility to the national defense.

## EXHIBIT E

## ASSOCIATED TRANSPORT, INC.

Schedule of equipment owned and leased by the companies included in I. C. C. application as of April 30, 1941

		Motor carrier companies										Non-carrier companies				Total		Grand total all companies			
		Consolidated Motor Lines, Inc.		McCarthy Freight System, Inc.		M. Moran Transportation Lines, Inc.		Horton Motor Lines, Inc.		Barnwell Brothers, Inc.		Transportation Inc.		South-eastern Motor Lines, Inc.						Arrow Carrier Corp.	
Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased	Owned	Leased
74	10	71	2	18	16	115		31	8	43	8	20		85		1		8			
264	19	104	11	214	23	293	129	129	1	83		29		89							
340	19	185	11	348	19	278		132	1	80		27		97							
		</																			

NOTE.—Southern New England Terminals, Inc. and Conger Realty Company, Inc. do not own or lease any revenue equipment. The reserve account does not represent an actual deposit of funds.



## CERTIFICATE OF SERVICE

I, B. M. Seymour, do hereby certify that upon the 25th day of July, 1941, I served the foregoing application on the Boards, Commissions, or officials having authority to regulate the business of transportation by motor vehicle (or on the Governor where there is no Board, Commission, or official), of the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Virginia, Maryland, West Virginia, Delaware, North Carolina, South Carolina, Tennessee, Alabama, Mississippi, Georgia, Florida, and Louisiana, by delivering in person (or mailing by registered mail) a true and correct copy of this application to each thereof.

ASSOCIATED TRANSPORT, INC.,

By B. M. SEYMOUR,

*President.*

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Before The Interstate Commerce Commission

APPLICATION OF ASSOCIATED TRANSPORT, INC., TO ISSUE SECURITIES.

Filed July 25, 1941

Docket No. BMC-F-1613

400 APPLICATION FOR AUTHORITY UNDER SECTION 214,  
MOTOR CARRIER ACT, 1935, TO ISSUE SECURITIES

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. BMC-F—

Application of Associated Transport, Inc., To Issue 700,000 shares of its common stock—par value \$1.00, and 60,000 shares of its preferred stock—par value \$100.00, For Purpose of (1) Acquiring the stock of various motor carriers and certain of their affiliated companies, and (2) providing working capital.

To the Interstate Commerce Commission, Washington, D. C.:

APPLICANT STATES

1. That full and correct name of applicant is Associated Transport, Inc.

Business address 1775 Broadway, New York, New York,  
(Street and number) (City) (County)

New York.

(State)

II. That applicant is a Delaware corporation doing business under the trade name or style of Associated Transport, Inc., and

that information respecting applicant is set forth in Exhibit A and supplemental exhibits, attached hereto and made a part hereof.

III. That information respecting the nature of the proposed issue of securities, for which authority is herein requested, and the terms and conditions thereof, is set forth in Exhibit B and supplemental exhibits, attached hereto and made a part hereof.

IV. That there are set forth in Exhibit C, attached hereto and made a part hereof, the facts and circumstances on which applicant relies to establish that the issuance of securities, for which authority is herein requested, is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier or of service as a contract carrier, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose, within the meaning of Section 20 (a) (2) of the Interstate Commerce Act.

V. That if any security or securities set forth and described in this application as pledged or held unencumbered in the treasury of the applicant shall, subsequent to the filing of this application, be sold, pledged, repledged, or otherwise disposed of by the applicant, said applicant shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

401 VI. That, in the event of the approval of this application, applicant will subsequently submit to the Commission, in form prescribed thereby, report showing the disposition made of the securities covered by this application and the application of the proceeds thereof.

VII. That applicant will submit such additional information to support the applicant's prayer herein as the Commission may require.

Wherefore, the applicant prays: That the Interstate Commerce Commission enter an order authorizing applicant to issue the securities as described in Exhibit B and upon the terms and conditions set forth therein.

Dated this 22nd day of July 1941.

[SEAL]

ASSOCIATED TRANSPORT, INC.

By B. M. SEYMOUR,

*President.*

Post Office Address: 1775 Broadway, New York, New York.

## OATH

STATE OF NEW YORK,

*County of New York, ss:*

B. M. Seymour makes oath and says that he is the President of the Associated Transport, Inc., that he is authorized on the part of said applicant to verify and file with the Interstate Commerce Commission this application and exhibits attached hereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

B. M. SEYMOUR.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 22 day of July 1941.

[SEAL]

JOSEPH C. CATANZARO,  
*Notary public.*

Bronx County Clerk's No. 26. Bronx County Register's No. 21C42. New York County Clerk's No. 132. New York County Register No. 2C125. Term Expires March 30, 1942.

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## EXHIBIT A

ASSOCIATED TRANSPORT, INC.

## Information Respecting Applicant

1. (a) Date and State of incorporation is as follows: Date March 5, 1941. State, Delaware.

(b) Name and business address of directors: H. D. Horton, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, 1775 Broadway, New York, N. Y.; E. J. Arbour, 1179 Main St., Hartford, Conn.; J. J. McCarthy, Olney & Wales St., Taunton, Mass.; J. P. Altwater, 22 Roosevelt St., Buffalo, N. Y.; R. W. Barnwell, Hawking St., Burlington, N. C.; C. C. Brock, Commonwealth Ave., Bristol, Va.; W. L. Moore, 75 Ivy St. NE., Atlanta, Ga.; and J. S. Arnold, 52 William St., New York, N. Y.

(c) Name, title, and business address of officers: H. D. Horton, Chairman Board of Directors, 1001 Clarkson St., Charlotte, N. C.; B. M. Seymour, President and Treasurer, 1775 Broadway, New York, N. Y.; and B. D. Ryan, Secretary, 1775 Broadway, New York, N. Y.

(d) Name and business address of ten principal stockholders as of last record date and their respective holdings:

Name	Street address, city, and state	Extent of interest Class Shares %
------	---------------------------------	--------------------------------------

See Exhibit A-1-(d) attached hereto:

403 (e) A properly certified copy of articles of incorporation and bylaws, with all amendments, have been filed concurrently herewith in an application for authority under Section 5, Interstate Commerce Act, to acquire control of certain motor carriers through ownership of stock. See BMC-45.

2. Applicant is not a partnership.
3. Applicant is not an association or other form of organization.
4. Applicant is not a trustee, receiver, or other like representative of the real party in interest.
5. Applicant is not a party of a system or group of companies.
6. Applicant was incorporated on March 5, 1941, to become the instrument through which

- (1) unification of control, and
- (2) consolidation of certain motor carriers and certain of their affiliated noncarrier companies could be effectuated.

See application filed concurrently herewith in BMC-45.

7. No annual report to stockholders has been made since applicant has not been in existence for a year.
8. Applicant is not engaged in transportation by motor carrier in interstate or foreign commerce.
9. Attached hereto are separate statements, identified as indicated, showing the following described information:

A-9-a. Profit and Loss Statement of applicant for the current calendar year to the latest available date is furnished in BMC-45, Exhibit A-10. No Profit and Loss Statement for each of the two preceding calendar years are available since applicant was not then in business.

A-9-b. Balance Sheet Statement, in the form prescribed, as of the latest available date in the current calendar year, is furnished in BMC-45, Exhibit A-6. No Balance Sheets for the two preceding calendar years are available since applicant was not then in business.

10. The name and address of the independent certified public accountant who prepared, or under whose direction were prepared, the financial statements requested in (9) above, are as follows: Harry J. Reicher and Company, Empire State Building, New York, New York.

11. No additions to, or reductions in, the property account during the periods for which the balance sheets requested in A-9-b represent anything other than acquisitions of property, or retirements or sale of property.

12. There is no policy or practice with respect to reserves for depreciation, or similar reserves, as the applicant does not own any depreciable property at this date.

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## EXHIBIT A-1-(d)

List of stockholders of applicant as of latest record date and their respective holdings

Name	Address	Extent of interest		
		Class	Shares	%
H. D. Horton	Charlotte, N. C.	Common	10,562	14.77
Mrs. H. D. Horton	Charlotte, N. C.	Common	514	.72
Ben S. Horton	Charlotte, N. C.	Common	513	.72
Henry C. Horton	Charlotte, N. C.	Common	513	.72
Everett J. Arbour	1886 Albany Ave., W. Hartford, Conn.	Common	890	1.20
Helen Arbour	1886 Albany Ave., W. Hartford, Conn.	Common	528	.74
Everett J. Arbour, Trustee	1886 Albany Ave., W. Hartford, Conn.	Common	1,858	2.59
Elsie Cotter Ghent	114 Garfield Rd., W. Hartford, Conn.	Common	296	.41
Helen H. Joseloff	47 Cumberland Rd., W. Hartford, Conn.	Common	117	.16
Phoenix Securities Corporation	44 Wall St., New York City	Common	2,271	3.17
Earl E. Simpson	Waterloo Road, Waterloo, N. Y.	Common	236	.30
Wendell E. Simpson	64 Ridgewood Rd., W. Hartford, Conn.	Common	236	.30
Alexis P. Scott	104 Ridgewood Rd., W. Hartford, Conn.	Common	50	.07
John J. McCarthy	425 Canton Ave., Milton, Mass.	Common	983	1.37
George E. Bertucio	63 Park Edge Ave., Springfield, Mass.	Common	418	.58
Charles F. McCarthy	194 Main St., No. Easton, Mass.	Common	398	.43
Isabel J. McCarthy	425 Canton Ave., Milton, Mass.	Common	464	.49
Kathleen E. McCarthy	194 Main St., No. Easton, Mass.	Common	464	.49
Alexander W. Chisholm	16 Cape Code Lane, Milton, Mass.	Common	100	.14
Alexander W. Chisholm and Edwin F. Weber, Trustees	Corner Olney and Wales Streets, Taunton, Mass.	Common	740	1.03
Clifford C. Brock	Bristol, Va.	Common	627	.87
B. L. Huntsman	Bristol, Va.	Common	327	.45
J. T. Howard	Bristol, Va.	Common	74	.10
Vance F. Graham	Bristol, Va.	Common	26	.04
J. P. Altwater	22 Roseville St., Buffalo, N. Y.	Common	2,808	3.92



*List of stockholders of applicant as of latest record date and their respective holdings—Continued*

Name	Address	Extent of interest		
		Class	Shares	%
B. M. Seymour. <sup>1</sup>	1775 Broadway, New York, N. Y.	Common	31,240	43.7
A. S. Clay	Hurt Building, Atlanta, Ga.	Common	275	38
405 The Transport Company <sup>2</sup>	32 William St., New York, N. Y.	Common	11,278	15.8
R. W. Barnwell	P. O. Box 341, Burlington, N. C.	Common	2,794	3.90

<sup>1</sup> B. M. Seymour, agreeable to an offer of Associated Transport, Inc., has purchased at par the above common stock out of those shares allocated to be sold to raise funds for the prosecution of the current Interstate Commerce Commission application. Said B. M. Seymour has no agreement or understanding to purchase or otherwise acquire any additional stock of Associated Transport, Inc., from any source whatsoever.

<sup>2</sup> Certain accounting material, engineering surveys, appraisals, and maps and transcript of testimony, etc., developed or acquired by The Transport Company in conjunction with an attempted merger in 1940 of a group of carrier and noncarrier companies including the companies concerned in this application, have been purchased from said corporation for 9,000 shares of the \$1 par common stock of Associated Transport, Inc.

<sup>3</sup> To be distributed to various stockholders of Barnwell Brothers, Inc., in accordance with instructions to be furnished by them.

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## EXHIBIT B

NATURE OF TRANSACTION PROPOSED AND TERMS AND CONDITIONS THEREOF

1. A detailed description of the stock proposed to be issued, is as follows:

(a) Preferred stock all of one class.

(b) Common stock all of one class.

(1) 45,000 shares of preferred stock, and 700,000 shares of common stock are proposed to be issued, in exchange for stock of certain motor carriers and certain noncarriers, as more particularly set forth in Exhibits C-1 thru C-1 a, b, c, in an application filed concurrently herewith under Section 5, Interstate Commerce Act, in Docket No. BMC-F.

(2) 15,000 shares of preferred stock are proposed to be issued, offered, and sold to the public for working capital and general corporate expenses.

(c) Preferred stock shall have a par value of \$100.00. Common stock shall have a par value of \$1.00.

2. Each issue of stock for which this application is made and each class of capital stock outstanding as of the date of this application, has the following rights, preferences, and privileges.

(a) Voting rights: The holders of the preferred and common stock have one vote for each share of stock. At the election for directors each stockholder entitled to vote shall be entitled to as many votes as shall equal the number of his voting shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute

them among the number to be voted for, or for any two or more of them, as he may see fit.

(b) Preferences: The preferences on preferred stock relate to dividend and liquidation rights, as more particularly set forth in (d) and (f) hereto.

(c) Conversion privileges: The holders of the preferred stock shall have the right to convert said preferred stock into common stock of the corporation as follows:

Within the first three years after date of issuance at the rate of four shares of common stock for one share of preferred stock; for the next succeeding three years at the rate of three and one-third shares of common stock for one share of preferred stock, and, thereafter, at the rate of three shares of common stock for one share of preferred stock.

(d) Rights to dividends: The holders of the preferred stock shall be entitled to a cumulative preferential dividend of 6% per annum on the par value, payable annually, semiannually or quarterly, as may be determined by the board of directors. Dividends on the common stock, when and as declared by the board of directors, shall be paid provided the full dividend on the preferred stock for all past dividend periods shall have been paid.

407 (e) Retirement rights: At any time within five years from date of issuance the board of directors of the corporation may redeem the whole or any part of the outstanding preferred stock on any dividend payment date by payment of \$110.00 for each share thereof, and thereafter, by paying \$105.00 for each share thereof, together with unpaid dividends at the rate of 6% per annum on the par value thereof to date of such redemption. Thirty days prior written notice to each stockholder of such redemption is required.

(f) Liquidation rights: In the event of any liquidation, dissolution or winding up of the affairs of the corporation, the holders of the preferred stock shall be entitled, before any assets of the corporation shall be distributed among or paid over to the holders of the common stock, to be paid \$105.00 per share, together with unpaid dividends due at the rate of 6% per annum on the par value thereof.

3. This application does not cover the issuance of securities other than stock.

4. No information is given for issuance of securities other than stock since no application thereof is made herein.

5. There has been no denial by any regulatory body effecting the right to sell any securities of the applicant.

6. (a) No commitment with respect to the sale of securities of the applicant as proposed herein has been made with or received

from any underwriter or any other person, firm, corporation, or association. When as and if an application filed concurrently herewith under Section 5, Interstate Commerce Act, in Docket No. BMC-F, together with this application, be approved and authorized by the Commission it is proposed to issue and offer to the public 15,000 shares of the preferred stock at not less than the par value thereof. In such event various underwriters will be offered the opportunity to take said preferred stock and any resulting underwriting agreement will be subject to the approval of and a copy of such agreement filed with the Commission.

(b) None of the securities are covered by outstanding options.

(c) The securities which the applicant seeks authority to offer to the general public are proposed to be offered at not less than the par value thereof.

(d) No person or group of persons are to be offered the securities for a consideration varying from the price at which securities are proposed to be offered to the general public.

7. Since no commitment with respect to the sale of securities of the applicant to the general public has been made or received from anyone, it is not possible to estimate the expenses in connection with the issue. Prior to the issuance of such securities applicant will furnish to the Commission the estimated expenses in connection therewith.

8. The net proceeds of the issue of securities proposed to be sold to the general public will be used for working capital and general corporate expenses.

408 9. No securities have been sold to the public within two years preceding the filing of this application.

10. No payment has been made to any organizer, nor is any amount intended to be so paid.

11. Attached hereto are the following exhibits, identified as indicated:

B-11-a. Copies of all resolutions of directors authorizing the issuance of securities for which authority is herein requested, authenticated by a proper executive officer of the applicant; and, if the charter or bylaws require approval by the stockholders, copy of the resolution of the stockholders authorizing the issuance of such securities, and indicating the percentage of stock voting for such authorization.

B-11-b. Copies of all resolutions of stockholders or directors, or duly authorized committee thereof, authenticated by a proper executive officer of the applicant designating by name and for that purpose the executive officer by whom the application is signed and verified, and filed on behalf of the applicant.

B-11-c. Since applicant is not any organization than a corporation, no evidence is furnished showing authorization and de-

signation of the individual signing, verifying, and filing on behalf of the applicant.

B-11-d. Since applicant is not a trustee, receiver, or like representative of a real party in interest, no certified copy of the court order authorizing the contemplated action is furnished.

B-11-e. Signed opinion of counsel that the issue of securities, for which authority is herein requested, meets the requirements of law and will be legally authorized and valid if approved by the Commission.

B-11-f. Since applicant is not a motor carrier, no map indicating routes of applicant is furnished.

B-11-g. Specimens, or forms where specimens are not available, of all securities in respect of which the application is made.

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## EXHIBIT B-11-A

I, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct copy of a resolution unanimously adopted at a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June 1941:

"Resolved that after obtaining any required authority from any regulatory body (1) this corporation issue such of its preferred and common stock as shall be required by the contracts the execution of which has this day been authorized by this board, and (2) this corporation issue, offer, and sell to the public or otherwise fifteen thousand shares of its preferred stock at not less than the par value thereof for working capital and general corporate purposes, and the officers of this corporation are hereby authorized to carry this resolution into effect."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

B. D. RYAN,  
Secretary.

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## EXHIBIT B-11-b

1, Bertha D. Ryan, secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct copy of a resolution unanimously adopted at a special joint meeting of the stockholders and directors of said company duly held in the City of New York on the 11th day of June, 1941:

"Resolved that B. M. Seymour, president of this corporation, is hereby authorized to cause to be prepared, to sign, verify the facts

and circumstances, and cause to be filed with the Interstate Commerce Commission, such application or applications together with all appropriate exhibits, including but not limited to applications for the issue of such of its preferred and common stock as shall be required by certain contracts the execution of which has this day been authorized by this board, and the issue, offer, and sale to the public or otherwise of 15,000 shares of its preferred stock at the par value thereof for working capital and general corporate purposes."

Witness my hand and the seal of the corporation this 18th day of July 1941.

[CORPORATE SEAL]

B. D. RYAN,  
*Secretary.*

411

EXHIBITS B-11-a, B-11-b.

I, J. P. Altwater, Acting Secretary of Associated Transport, Inc., a corporation duly organized and existing under the laws of the State of Delaware, do hereby certify that the following is a true and correct excerpt from the minutes of a special meeting of the directors of said company duly held in the City of New York on the 23rd day of July 1941:

"The President presented to the Board of Directors agreement for the acquisition of capital stock of Arrow Carrier Corporation.

"The President also presented to the Board of Directors executed applications of this corporation to the Interstate Commerce Commission under Forms BMC-45 and BMC-22, in which applications the aforesaid acquisition of capital stock of Arrow Carrier Corporation was included.

"Upon motion duly made and seconded, it was

"Resolved, that the said agreement for the acquisition of capital stock of Arrow Carrier Corporation is expressly approved, ratified, and confirmed.

"Further resolved, that the action of B. M. Seymour, President of this corporation, in including such company in the aforesaid application, is hereby approved, ratified and confirmed, and that the said President is hereby directed to file such applications forthwith with the Interstate Commerce Commission."

Witness my hand and the seal of the corporation, this 23rd day of July 1941.

[CORPORATE SEAL]

JOHN P. ALTWATER,  
*Acting Secretary.*



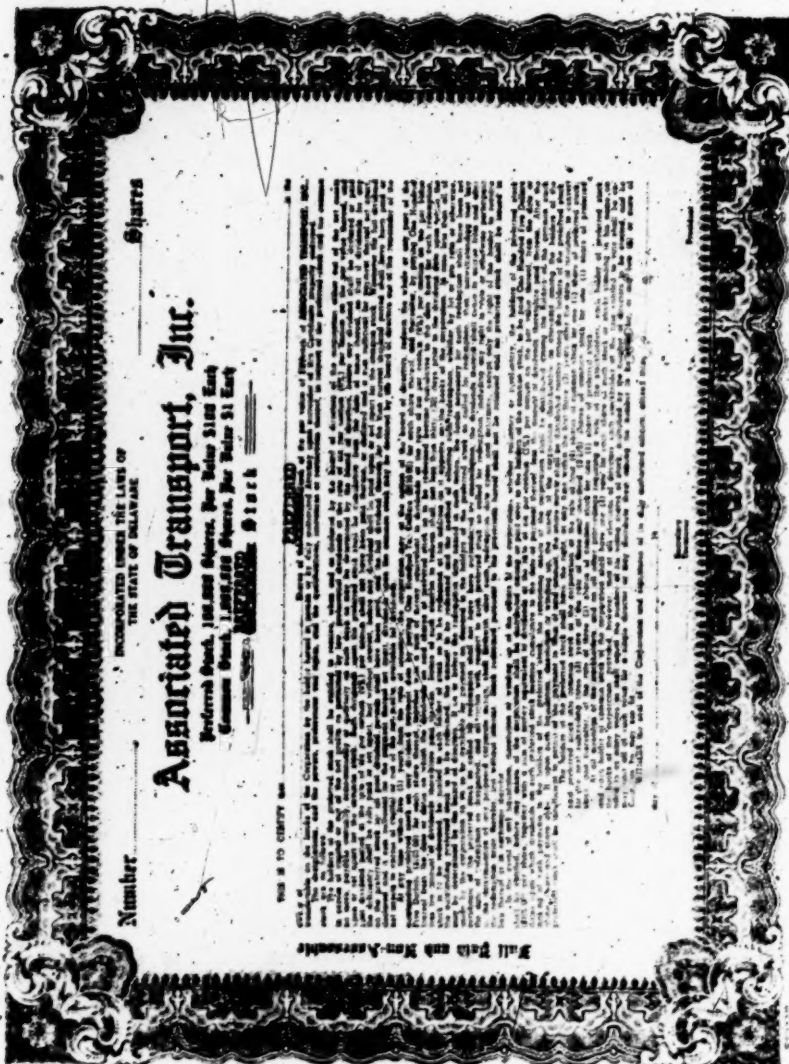
## Opinion of Counsel

It is the opinion of the undersigned counsel that the issuance of securities for which authority is herein requested, meets the requirements of law, and will be legally authorized and valid if approved by the Commission.

CLAUDE A. COCHRAN,  
Claude A. Cochran,  
HUGH M. JOSELOFF,  
Hugh M. Joseloff,  
MORTIMER ALLEN SULLIVAN.  
Mortimer Allen Sullivan.



Proposed specimen securities in respect of which the application is made.



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## EXHIBIT C

The facts and circumstances relied upon by the applicant to establish that the issuance of securities, for which authority is herein requested, is compatible with the public interest, are more particularly set forth in Exhibit D of an application made by this applicant, pursuant to Section 5, Interstate Commerce Act, and filed concurrently herewith.

Article Third of applicant's charter and the general laws of the State of Delaware, establish a lawful object within its corporate purposes for the issuance of securities, for which authority herein is requested.

The authority sought to issue 15,000 shares of preferred stock intended to be sold to the general public is for the purpose of raising working funds and for general corporate purposes. The additional capital thus provided will facilitate improvements in terminal facilities, purchases of additional equipment, and exchange of new for outmoded equipment, establishment of adequate and scientific maintenance shops, and advantageous large-scale purchases, and will establish a strong financial security for any emergency. It will decidedly aid applicant's ability to render prompt and efficient service to the public, and is reasonably necessary and appropriate for such purpose.

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[Copy]

Thurman Arnold, Assistant Attorney General.

## DEPARTMENT OF JUSTICE

WASHINGTON

AUGUST 15, 1941.

Honorable JOSEPH B. EASTMAN, *Chairman,*  
*Interstate Commerce Commission, Washington, D. C.*

MY DEAR MR. CHAIRMAN: I understand that a hearing on the application of Associated Transport, Inc., for approval of a proposed unification of numerous motor truck carriers along the Atlantic Seaboard has been set for August 18, 1941. I would like to request that representatives of the Antitrust Division be given the privilege of appearing before your Commission and presenting evidence bearing on the question of whether the proposed unification unduly restrains competition in the transportation field.

The reason for my request is that jurisdiction to determine whether unification of carriers unduly restrains competition has been given to the Interstate Commerce Commission. The Antitrust Division is the only government agency in a position to

present evidence on the monopoly question from a point of view of the public interest. Evidence presented by private parties necessarily must be colored by their own property interests in the controversy.

Therefore, we feel that it is part of our duty to complete the record before the Commission with such evidence as we have discovered in our investigations of transportation monopolies.

We respectfully request that thirty days time be given the Division in order to furnish the Commission with evidence to complete its record on the question of undue restraints of competition. We make this request because we believe that cooperation between the Antitrust Division and the Commission will most effectively carry out the will of Congress as expressed in the regulatory acts which the Commission administers and the Antitrust Act which this Division must enforce.

Sincerely,

(Sgd) THURMAN ARNOLD,  
Thurman Arnold,  
*Assistant Attorney General.*

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## ORDER

Interstate Commerce Commission

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

In the matter of petition for leave to intervene.

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of petition for leave to intervene in the above-numbered proceedings, filed on behalf of the Antitrust Division, Department of Justice:

It is ordered, That said petition be, and it is hereby granted, to the extent it seeks leave for said Department to be permitted to intervene and be treated as a party herein, with the right to have notice of, and to participate in, any proceedings herein, provided, however, that such permission shall not be construed as to allow said intervener to unduly broaden the issues.



And it is further ordered, That a copy of said petition and of this order be duly served on the parties to this proceeding.

Dated at Washington, D. C., this 16th day of August 1941.

By the Commission, Commissioner Porter.

[SEAL]

W. P. BARTEL,  
*Secretary.*

419 Before the Interstate Commerce Commission

Dockets Nos. MC-F-1612 and 1613

ASSOCIATED TRANSPORT, INC.

*Petition for leave to intervene*

Come now your petitioners, Virginia State Horticultural Society, West Virginia Horticultural Society, Berks-Lehigh Mountain Fruit Growers Association and Appalachian Apple Service, Inc., on behalf of themselves and the apple and peach growers and shippers in the States of Virginia, West Virginia, Maryland, and Pennsylvania, respectively, and represent that they have an interest in the above entitled proceedings and desire to intervene in and become parties to said proceedings, and for grounds of the proposed intervention, say:

I

(a) That the Virginia State Horticultural Society, its principal office at Staunton, Virginia, represents a membership of approximately 1,000 apple and peach growers and shippers in Virginia.

(b) That the West Virginia Horticultural Society, its principal office at Martinsburg, West Virginia, represents approximately 337 apple and peach growers in West Virginia.

420 (c) That the Berks-Lehigh Mountain Fruit Growers Association, its office at Boyertown, Pennsylvania, represents approximately 55 fruit growers of said counties.

(d) That Appalachian Apple Service, Inc., its principal office at Martinsburg, West Virginia, represents approximately 501 apple and peach growers of Virginia, West Virginia, Maryland, and Pennsylvania.

That each of said above organizations was created and is maintained to promote and protect the horticultural interests of their respective states and, among other things to expand the distribution of the fruit of their members and encourage the maintenance of just, reasonable, and nondiscriminatory freight rates and adequate transportation service by railroad as well as by highway.

## II.

That the shipping and receiving points of members of your petitioners are located within what is known as the Appalachian Fruit Belt or the Cumberland-Shenandoah-Potomac district in Official Classification territory served by the motor truck lines proposed to be merged by the applicant herein and any disturbance in the rates, rules, regulations, charges, or transportation service in this territory is of vital concern to your petitioners and their members.

## III

That Associated Transport, Inc., has filed an application herein asking the Commission for authority to acquire stock control of eight eastern and southern motor carriers and issue stock of a par value of some \$6,700,000.

The new combine contemplates operations through nineteen eastern and southern states from New England to Louisiana, including the States of Virginia, West Virginia, Maryland, 421 and Pennsylvania; involving more than 3,000 pieces of equipment, and assets totaling more than \$9,750,000. The eight operating companies involved are: Arrow Carrier Corporation, Horton Motor Lines, Inc., Barnwell Bros., Inc., Southeastern Motor Lines, Inc., Transportation, Inc., McCarthy Freight System, Inc., Consolidated Motor Lines, Inc., and M. Moran Transportation Lines, Inc.

That it is the belief of your petitioners that the proposed merger of these important motor truck lines, some of which are in keen competition with each other, and the issuance of securities as proposed, affect directly and/or indirectly the interest of your petitioners and their members.

Wherefore, said petitioners pray leave to intervene in and become parties hereto with the right to have notice of and be heard in person or by counsel, or other authorized representative, upon brief and at the oral argument if the latter is granted.

VIRGINIA STATE HORTICULTURAL SOCIETY,

(Signed) By: W. S. CAMPFIELD, *Secty.*

WEST VIRGINIA HORTICULTURAL SOCIETY,

(Signed) By: CARROLL R. MILLER, *Secty.*

BERKS-LEHIGH MOUNTAIN FRUIT GROWERS, INC.,

(Signed) By: L. E. NEWCOMER, *Mgr.*

APPALACHIAN APPLE SERVICE, INC.,

(Signed) By: CARROLL R. MILLER, *Secty.*

Dated at STAUNTON, VIRGINIA, September 30, 1941.

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## ORDER

Interstate Commerce Commission  
No. MC-F-1612ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORP. ET AL  
No. MC-F-1613

## ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

In the matter of petition for leave to intervene.

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-numbered proceedings and petition for leave to intervene filed on behalf of Virginia State Horticultural Society, Staunton, Va.; West Virginia Horticultural Society, Martinsburg, W. Va.; Berks-Lehigh Mountain Fruit Growers, Inc., Boyertown, Pa.; and Appalachian Apple Service, Inc., Martinsburg, W. Va.

It is ordered, That the said companies be, and they are hereby, permitted to intervene and be treated as parties hereto, with the right to have notice of, and to participate in, any further proceedings herein, provided, however, that such permission shall not be construed as to allow interveners to unduly broaden the issues.

And it is further ordered, That a copy of said petition and of this order be duly served on the parties to these proceedings.

Dated at Washington, D. C., this 7th day of October 1941.

By the Commission, Commissioner Porter.

[SEAL]

W. P. BARTEL,  
*Secretary.*

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Before the Interstate Commerce Commission

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL

Docket MC-F-1612

## ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

Docket MC-F-1613

*Petition of intervention*

Comes now your petitioner, the Secretary of Agriculture, and respectfully represents that he has an interest in the matters in controversy in the proceeding captioned above and desires to intervene in and become a party to such proceeding, and for grounds of the proposed intervention says:

1. The cases captioned above concern a proposed merger of the principal motor carriers operating North and South along the eastern seaboard.

2. From the evidence adduced at the hearing in these cases before the Commission's examiner it appears to the Secretary of Agriculture that the consummation of the proposed merger would in substantial measure result in the elimination of motor carrier competition in the East.

554 3. From the evidence adduced at the hearing in these cases before the Commission's examiner it appears to the Secretary of Agriculture that the consummation of the proposed merger would result ultimately in the cartelization of eastern transportation.

4. The elimination of competition in eastern transportation would adversely affect the interest of the producers and consumers of agricultural commodities.

Wherefore, petitioner prays leave to intervene and to be treated as a party hereto with the right to file exception or reply, as the case may be, to the proposed report of the examiner when it is made and to be heard in person or by counsel at the oral argument, if oral argument is granted.

Respectively submitted,

By direction of the Secretary,

(SIGNED) MARTIN G. WHITE,

*Solicitor,  
United States Department of Agriculture,  
Washington, D. C.*

HASKELL DONOHO,

*Of Counsel,*

CHAS. B. BOWLING, Chief,

*Transportation Division*

*Surplus Marketing Administration.*

Dated at Washington, D. C., November 17, 1941.

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Before the

Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition for leave to intervene*

Comes now your petitioner, the National Grange, and represents that it has an interest in the above-entitled proceedings and

desires to intervene in and become a party to said proceedings, and for grounds of the proposed intervention, says:

### I

That the National Grange is a general farm organization incorporated under the laws of the State of Kentucky. Its dues-paying membership approximates 800,000 persons. This membership is formed into 8,000 local and country units in 37 States of the Union.

### II

The purpose of the National Grange are to protect and promote the welfare of agriculture and among other things, to safeguard the interests of its members in matters relating to transportation and distribution, whether such transportation relates to railways, highways, or waterways.

### III

That Associated Transport, Inc., has filed an application herein asking the Commission for authority to merge 8 eastern and southern motor carrier lines and to recapitalize such companies and sell stock to the public.

556. The concerns which it is proposed to merge would constitute a combined operation extending from the States of New York and Massachusetts southward to Louisiana. Included in the proposed merger are the following concerns:

- M. Moran Transportation Lines, Inc.
- Consolidated Motor Lines, Inc.
- McCarthy Freight System, Inc.
- Transportation, Inc.
- Southeastern Motor Lines, Inc.
- Barnwell Bros., Inc.
- Horton Motor Lines, Inc.
- Arrow Carrier Corporation.

That the proposed combination of these large motor carriers, 4 of which are in direct competition with each other, and the recapitalization and issuance of securities as proposed, directly or indirectly, affect the interest of your petitioner and its members.

### IV

That approximately 300,000 members of the National Grange reside in the territory served by the motor truck lines proposed to



be merged in these proceedings; that many of these motor truck lines presently serve numerous of the above members of your petitioner; and that any change, disturbance or increase in rates, rules, regulations, or charges for transportation service in this territory is of vital concern to your petitioner and its members.

Wherefore, said petitioner prays leave to intervene in and become a party hereto with the right to have notice of and be heard in person or by counsel, or other authorized representative, upon brief and at the oral argument if the latter is granted.

THE NATIONAL GRANGE,  
By: FRED BRECKMAN,  
Fred Brenckman,  
*Representative:*

Dated at 1343 H. St. NW., Washington, D. C., November 10, 1941.

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## ORDER

Interstate Commerce Commission

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

In the matter of petition for leave to intervene.

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the record in the above-numbered proceedings and petitions for leave to intervene filed on behalf of the Secretary of Agriculture, Washington, D. C., and The National Grange, Washington, D. C.:

It is ordered, That said Secretary of Agriculture and The National Grange be, and they are hereby, permitted to intervene and be treated as parties hereto, with the right to have notice of, and to participate in, any further proceedings herein, provided, however, that such permission shall not be construed as allowing interveners to unduly broaden the issues.

And it is further ordered, That a copy of said petitions and of this order be duly served on the parties to these proceedings.

Dated at Washington, D. C., this 25th day of November 1941.  
By the Commission, Commissioner Porter.

[SEAL]

W. P. BARTEL,  
Secretary.

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Interstate Commerce Commission

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Proposed report by Vernon V. Baker, Examiner, Section of  
Finance, Bureau of Motor Carriers*

Served November 28, 1941

#### NOTICE TO THE PARTIES

This is a proposed report under part I (as distinguished from a report and recommended order under part II) of the Interstate Commerce Act, and in no event will become effective by operation of law.

Any exceptions to this proposed report should be filed with the Secretary, Interstate Commerce Commission, Washington, D. C., and served in accordance with rule XIV of the Rules of Practice.

In due course final report and order of the Commission will be issued.

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Interstate Commerce Commission

No. MC-F-1612<sup>1</sup>

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Submitted ----- Decided -----

1. Acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of capital stock, and subsequent consolidation into Associated Transport, Inc., of the operating rights and properties of such carriers, for owner-

<sup>1</sup>This report also embraces No. MC-F-1613, Associated Transport, Inc.—Issuance of Securities.

ship, management, and operation, approved and authorized, subject to conditions.

2. Issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 860,411 shares of common stock, having par value of \$100 and \$1 per share, respectively, for consummating the acquisitions herein authorized and for other corporate purposes, approved and authorized, subject to conditions.

Claude A. Cochran, Hugh M. Joseloff, and Mortimer A. Sullivan for applicant.

Thurman Arnold, Charles B. Bowling, Fred Brenckman, Smith R. Brittingham, Jr., John S. Burchmore, W. G. Burnette, W. S. Campfield, Frank Coleman, Joseph W. Connolly, John B. Dempsey, Haskell Donoho, Charles J. Fagg, James A. Glenn, Edward F. Lacey, J. D. Lawson, James D. Mann, David G. Macdonald, Carroll W. Miller, John M. Miller, L. E. Newcomer, Thomas P. O'Brien, L. F. Orr, W. H. Ott, Jr., Joseph A. Padway, Floyd F. Shields, Fred A. Tobin, Mastin G. White, Arne C. Wiprud, and Warren Woods for interveners.

**PROPOSED REPORT BY VERNON V. BAKER, EXAMINER, SECTION OF FINANCE,  
BUREAU OF MOTOR CARRIERS**

By application filed July 25, 1941, Associated Transport, Inc., New York, N. Y., seeks authority under section 5, Interstate Commerce Act, (1) to acquire control, through purchase of capital stock, of eight corporations, viz:

560 Arrow Carrier Corporation, Paterson, N. J.; Barnwell Brothers, Incorporated, Burlington, N. C.; Consolidated Motor Lines Incorporated, Hartford, Conn.; Horton Motor Lines, Incorporated, Charlotte, N. C.; McCarthy Freight System, Inc., Taunton, Mass.; M. Moran Transportation Lines, Inc., Buffalo, N. Y.; Southeastern Motor Lines, Incorporated, Bristol, Va.; Transportation, Incorporated, Atlanta, Ga.; and (2) to consolidate into itself the operating rights and properties of these corporations<sup>2</sup> within one year from date of acquisition of control. By separate application concurrently filed, as amended, Associated Transport, Inc., seeks authority under section 214 of the act to issue 54,049 shares of preferred and 880,311 shares of common stock, having par value of \$100 and \$1 per share, respectively, to enable it to acquire control of the above-mentioned companies and four affiliated noncarrier companies,<sup>3</sup> to provide funds for working

<sup>2</sup> These corporations will hereinafter be referred to as Arrow, Barnwell, Consolidated, Horton, McCarthy, Moran, Southeastern, and Transportation, respectively, and collectively as the carriers involved.

<sup>3</sup> The affiliated companies involved are Barnwell Warehouse & Brokerage Company, Brown Equipment & Manufacturing Company, Conger Realty Company, and Southern New England Terminals, Inc., herein called Barnwell Warehouse, Brown, Conger, and Southern Terminals, respectively. Barnwell Warehouse is an associated company of Barnwell, Brown and Conger of Horton, and Southern Terminals of McCarthy.

capital and other corporate purposes; and for conversion from time to time of the preferred stock issued.

The applications were heard on a consolidated record, and briefs have been filed. A motor carrier, The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, The National Industrial Traffic League, and the Antitrust Division, Department of Justice, oppose the applications. A number of other motor carriers, shippers, shipper organizations and the Lynchburg, Va., Chamber of Commerce also intervened but did not oppose the application. Evidence was introduced by the Antitrust Division. The Secretary of Agriculture and several agricultural associations intervened subsequent to the hearing.

561 Applicant was organized March 5, 1941, under the laws of Delaware, primarily for the purpose of effectuating the transactions proposed, and is not presently engaged in any business. It is authorized to issue 100,000 shares of \$100-par-value preferred stock, and 1,000,000 shares of \$1-par-value common stock. It has issued, and there are presently outstanding, 71,480 shares of common stock, the largest single stockholder being B. M. Seymour, its president, who owns 31,420 shares. The remainder of the outstanding stock is held by stockholders of the corporations of which applicant is proposing to acquire control. With the exception hereinafter mentioned, all of the outstanding stock was subscribed and paid for at par to provide funds for organization expenses and for prosecution of the instant applications. The subscribers have agreed that they will not sell or otherwise dispose of such stock for a period of 30 months from June 11, 1941, subject to certain exceptions in the case of all subscribers except Seymour. Applicant delivered 9,000 shares of its common stock to The Transport Company, of New York City, for engineering and accounting data with respect to the companies involved, which data were developed by The Transport Company in connection with proceedings described in Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, herein called the Transport Co. case. The Transport Company is controlled, through ownership of all its outstanding stock, by Kulin, Loeb & Company, investment bankers of New York City.

Applicant's board of directors consists of nine persons, seven of whom are officers of the respective carriers of which control would be acquired. One member represents The Transport Company, which has contracted to sell Arrow's stock, and the ninth

\*A subscriber other than Seymour may transfer all or part of his stock to one or more officers or employees of the company herein involved, excluding applicant, of which he is presently a stockholder, provided that only one transfer of each share of stock may be made, and no transfer may be made for any consideration greater than \$1 per share.

member is Seymour. H. D. Horton, who owns all outstanding stock of Horton, is chairman of the board.

Applicant's balance sheet as of June 30, 1941, shows assets aggregating \$60,202, consisting of: Cash \$36,446, notes receivable 562 \$15,620, and organization expenses \$8,136. Liabilities were:

Capital stock \$60,202. Since the date of that balance sheet, applicant has issued 11,278 shares of common stock.

A general description of the organization and operations of each of the carrier and noncarrier companies involved in these applications, except applicant, is contained in Appendix A of the Transport Co. case. The carriers operate principally as motor-vehicle common carriers of general commodities, over a network of regular routes, and together serve the principal points in Massachusetts, Rhode Island, Connecticut, New York, Eastern Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, and North Carolina. Their routes also extend from points in such area to Cleveland, Ohio, Pittsburgh, Pa., Nashville and Chattanooga, Tenn., Great Falls and McColl, S. C., and to New Orleans, La., and Pensacola, Fla., via Atlanta, Ga., and Montgomery, Ala., and pass through northeastern West Virginia. They operate approximately 3,300 units of revenue equipment, and the total highway miles covered by the regular routes of the respective carriers is 37,884. Certain of such carriers also operate over irregular routes in the same general territory covered by their regular-route operations, and McCarthy conducts certain contract-carrier operations which will be hereinafter more particularly described. Since October 11, 1940, Arrow's operations have been conducted by The Transport Company under a lease of the former's operating rights and properties. As amended, such lease expires December 31, 1941, and provides for a rental equal to the net earnings derived from the operations, provided that if such rental exceeds 15 percent of the net worth of Arrow as of March 31, 1941, the excess shall be divided equally between lessor and lessee.

Balance-sheet statements of the companies involved, as of April 30, 1941, are shown in Appendix A of this report. A statement showing, to the extent available, their revenues and net income, before and after income taxes, for the years 1932 to 1940, inclusive, and the four-month periods ended April 30, 1940 and 1941, 563 respectively, appears in Appendix B. In order that the result of operations by Arrow and its lessee may be more clearly presented, on a basis comparable to that of the other carriers, financial data herein contained respecting Arrow disregards the existence of the lease and treats the revenues and ex-



penses of lessee, accruing during the period of the lease, as revenues and expenses of Arrow, whereas, technically, only the net income would be reflected on the latter's books.

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## TERMS OF PROPOSED TRANSACTIONS

Under separate agreements entered into between it and the stockholders<sup>3</sup> of the carrier and non-carrier companies involved, applicant would acquire all outstanding stock of each of those companies with the exception of Arrow and Horton. With respect to Arrow, applicant would acquire all of its common and 1,120, of 1,380 shares outstanding, of its preferred stock. Such preferred stock, having a par value of \$100 per share, is redeemable at \$105 per share plus accrued dividends, and that portion not purchased by applicant would be called for redemption either prior to or shortly after completion of the purchase. In addition to the common stock outstanding, all of which would be acquired by applicant, Horton has issued 2,666 shares of \$20-par-value employees preferred stock and has received subscriptions for 276 additional shares of such stock. The employees preferred stock, which is redeemable at par plus accrued dividends, would be called for redemption prior to consummation of the proposed transaction.

Contracts respecting acquisition of the stocks of the respective companies are substantially uniform. Their most important features are described below.

The contracting stockholders of each of the companies of which control would be acquired would exchange their stock in such company for capital stock of applicant in an amount determined as follows: Preferred stock having a par value equal to 80 percent of the net worth, as of April 30, 1941, of the particular company involved, exclusive of any increase therein resulting from application of lower depreciation rates, as hereinafter mentioned; and common stock of a par value equal to an amount obtained by deducting from the company's net profit for the year ended April 30, 1941, a sum equal to 6 percent of the par value of the preferred stock received, and dividing the remainder by two.

565 Fractional shares of one-half or more would entitle the parties to a full share, and a fractional share of less than one-half would be disregarded.

Net worth and net profit of a company for the purposes of the agreement was determined in accordance with formulae prescribed

<sup>3</sup> The agreement respecting Arrow's stock was entered into with The Transport Company. The latter does not presently own the common stock which it agreed to sell to applicant but is under obligation to purchase such stock on or before December 18, 1941, pursuant to agreement described in the *Transport Co.* case, which has been subsequently amended in certain respects not here important.

therein. Balance-sheet and income statements of the companies for the date and period indicated, prepared in accordance with regulations of this Commission, were audited and adjusted pursuant to such formulae by a public accounting firm. The principal adjustments made were as follows: Intangible items were eliminated; provision for income taxes was made on the basis of 1940 rates; tires on equipment at the beginning and ending of the stated period were computed at 50 percent of cost; in computing net worth and net profit, prescribed rates of depreciation were applied;<sup>a</sup> reserves for uncollectible freight accounts receivable were established on a uniform basis; and the amount of certain expenditures, specifically set forth in the respective contracts, made during the applicable period, represented as being of a non-recurring nature, less provision for income taxes, were added to the adjusted net profit of the respective companies. The total of such expenditures, after deduction for taxes, applicable to each of the companies is set forth in the margin. Deductions were also made from the net worth of Arrow and Horton in amounts equal to the call price, excluding accrued dividends, of the preferred stock of those companies which would not be acquired by applicant. A further reduction of \$12,000 was made in Arrow's net worth by reason of a payment to be made by it in that amount for cancellation of the liability of Arrow under an employment agreement with one of its officers. Consolidated's net worth was 566 reduced by \$36,000 representing an expenditure made by it subsequent to April 30, 1941, for acquisition of 90 shares of its outstanding capital stock. Schedules showing the nature of all adjustments made are contained in the record. The net worth and net income of each of the companies involved for the date and period applicable, as reflected in their accounts and as adjusted for the purposes of determining the consideration, are shown in Appendix C of this report. That appendix also shows the amount of preferred and common stock which applicant would be obligated to issue in order to consummate the transactions.

In determining the considerations, exceptions were made in the following instances: (1) in the case of Barnwell Warehouse, a departure from the general provisions was made necessary because Barnwell Warehouse, in addition to other assets, owns a substantial portion of Barnwell's stock and would receive therefor 1,107 shares of applicant's preferred and 15,472 shares of its common stock. The consideration for the stock of Barnwell

<sup>a</sup> If application of such depreciation rates resulted in increasing the value of a company's tangible property, such increase would not entitle the vendor stockholders to additional preferred stock of applicant, but in lieu thereof they would receive common stock having a par value equal to 4 percent of the amount of increase.

<sup>1</sup> Arrow, \$30,556; Barnwell, \$6,073; Barnwell Warehouse, none; Brown, \$1,072; Conger, none; Consolidated, \$25,003; Horton, \$35,925; McCarthy, \$7,974; Moran, none; Southeastern, \$8,643; Southern Terminals, \$2,565; Transportation, none; total, \$117,753.

Warehouse was fixed at 1,222 shares of preferred and 16,876 shares of common stock. As applicant, in acquiring control of Barnwell Warehouse, would, in effect, reacquire the stock received by that corporation, the net consideration for other assets of that company would be 115 shares of applicant's preferred and 1,404 shares of its common stock. (2) The stockholders of Moran would be entitled to 29,000 shares of applicant's common stock in addition to that deliverable under the general provisions of the contract. (3) No adjustments were made with respect to depreciation on Southeastern's revenue equipment, and, in lieu thereof, the contract provides for delivery to its stockholders of 2,000 additional shares of applicant's common stock. (4) The consideration for the stock of Transportation, which company's financial statements show deficits in net worth and income, was fixed at 5,335 shares of applicant's common stock.

The selling stockholders in each instance agreed to purchase at par a prescribed number of shares of applicant's common stock for the purpose of paying expenses in connection with the proposed transactions. This provision of the agreements has been executed.

567 A number of restrictions are imposed calculated to preserve the assets of the respective companies of which control would be acquired, such as limitations on salaries and allowances, expenditures out of the ordinary course of business, declaration of dividends, and disposition of assets. Amendments to the original agreements provide that the respective companies may distribute by dividends, compensation, expense or otherwise, up to 20 percent of their net earnings for the year ended December 31, 1941, before provision for income taxes.

Upon closing of the transactions, applicant may withhold 15 percent of each class of its stock deliverable to the selling stockholders, to secure it against losses from undisclosed and contingent liabilities and other specified causes. Such stock may be withheld for three years but may be released sooner upon vote of two-thirds of applicant's board of directors.

The contracts contemplate closing of the transactions within 10 days after approval by this Commission, but such time may be extended by agreement between applicant and a majority of the persons named as designees of the stockholders in the respective contracts.

Consummation of each contract is conditioned upon approval by this Commission of the particular acquisition involved and approval of acquisition of the stocks of Barnwell, Consolidated, Horton, McCarthy, and Moran, and is further conditioned upon the Commissioner of Internal Revenue entering into a closing agreement, approved by the Secretary, Undersecretary, or an

Assistant Secretary, of the Treasury declaring that the contemplated transactions constitute a tax-free reorganization.

Consolidation: As indicated, authority is sought to consolidate into applicant the operating rights and properties of the carriers involved within one year from the date of acquisition of stock control. It is proposed that applicant shall take over all of the assets and assume all of the liabilities of the carriers, and shall become the sole operating company. Decision has not been reached as to whether the separate identities of the non-carrier companies would be maintained. With respect to Brown, tentative conversations have been had with other interests looking toward ultimate disposal of that company's stock.

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## BENEFITS OF PROPOSED UNIFICATION

The evidence is convincing that unification of these carriers under common control, and consolidation of their operations into one unit, would present many opportunities for greater economy and efficiency of operation.

The unification would permit of more efficient and greater utilization of equipment, and corresponding reduction in consumption of motor fuel. Many carriers are now finding it difficult to provide adequate equipment to meet the needs of the shipping public. Consolidation of the tonnage of the carriers would doubtless result in a higher load factor on vehicles used in over-the-road service, and there would be a large reduction in the number of trucks required for peddler runs and pick-up and delivery service at terminal points. Extension throughout the proposed system, as planned, of scientific maintenance and safety programs, which, because of their size most of the carriers involved are unable to undertake to the extent possible to applicant with the combined facilities and resources of all the carriers involved, would add to the average life of equipment and result in more economical and safe operation and fewer road failures. The experience, and the garage and testing facilities of Consolidated and Horton, would be of material assistance in carrying out such a program. Vehicles could be readily shifted from one part of the system to another to meet peak demands and extraordinary needs, and by reason of that fact less reserve equipment in the aggregate would be required.

The eight carriers involved presently maintain 179 separate terminals in 129 cities and towns. In one city 6 terminals are located, in another 5; in 11 cities there are 3 each, and in 19 cities 2 each. At some points the terminals would be consolidated and at others there would be a rearrangement of use; for instance, where two terminals are presently located, one might be used as

an inbound and the other as an outbound terminal in order to reduce congestion and confusion in handling shipments. Consummation of the proposed transactions would, no doubt, result in substantial economies in terminal expense, and, through  
570 more efficient use of facilities, would reduce delay in the movement of traffic. Additional terminals would be established at some points where there is presently insufficient traffic accruing to any one of the carriers to justify its maintaining such facilities. This would be of convenience to shippers in those localities. Some of the carriers, particularly Transportation, have been using terminal facilities ill-adapted to such use because they have not had sufficient capital to undertake construction of proper terminals. This has materially increased the cost of operations. With the resources available to applicant, it would be able, to a degree at least, to remedy that situation.

Through movement of freight, without physical transfer of lading, between all points served by the respective carriers would be made possible. It is proposed to inaugurate through-trailer service between points where sufficient traffic is available to justify such service. This would reduce terminal costs, loss and damage claims; and the time in transit of freight now interchanged by from 6 to 36 hours. The carriers involved presently interchange a substantial amount of freight, between themselves and with other carriers. During the calendar year 1940 at New York City their interchange business amounted to \$997,000.

The Antitrust Division contends that unification of control, or consolidation, of these carriers is not necessary in order to obtain the benefits of through-trailer service, and that such service could be rendered by independent carriers through interchange of equipment without physical transfer of lading. While theoretically this may be true, from a practical operating standpoint there are many obstacles to effectuation of such arrangements. Carriers are generally reluctant, and many refuse, to turn over their equipment to others particularly when they need all available equipment for their own traffic. A carrier delivering equipment to another can never be sure when it will be returned. Complications are introduced because of the varying types, sizes, and unit costs  
of equipment used by the various motor carriers. In in-  
571 stances where equipment is interchanged there is a tendency on the part of operating personnel of each carrier to deliver inferior equipment to the other. Many disputes arise over questions of maintenance and damages incurred. There can be no doubt that through movements can be coordinated to better advantage and handled more expeditiously under common control, and that consummation of the instant transactions would result in



through movement of much freight which is now being interchanged. The fact that instances where independent motor carriers presently interchange equipment are relatively rare is itself evidence of the difficulties encountered in the making of satisfactory arrangements between them.

The unification would result in simplifying relations with shippers and public regulatory bodies. Tracing of shipments and settlement of claims would be facilitated. Congestion at shippers' platforms would be lessened. A reduction in the number of solicitors calling on shippers would result. Single-line service throughout the wide territory which would be covered by applicant would be advantageous to shippers served by it.

In addition to those previously referred to, economies could be effected through the greater purchasing power of applicant and its ability to obtain necessary financing at lower cost. Substantial savings could also be made in general and administrative expense, insurance expense, and communication expense. Using the expenses incurred by the respective carriers for the year ended April 30, 1941, as a basis, it was estimated that economies could be effected as result of the unification in an amount aggregating \$1,600,000 in the expense items shown below. The aggregate expenses of these companies under the same items for the period indicated is also shown.

572	Estimated savings	Expenses incurred
Insurance and safety expense.....	\$275,000	\$1,053,687
Sales, tariff, and advertising expense.....	150,000	734,893
Equipment maintenance and garage expense.....	450,000	2,273,442
Terminal expense.....	550,000	3,305,246
Administrative and general expense.....	175,000	1,844,016

<sup>1</sup> This is the amount estimated as the saving which would be accomplished during the first year of unified operation. It is expected that the saving in the second year would amount to \$700,000.

It was estimated that \$150,000 would be required for expenses of the central office, and that transportation expense would increase by \$125,000 because of increased cost of gasoline and oil. Such higher cost of gasoline and oil would, of course, be equally applicable to the carriers operated independently. The evidence with respect to the amount of economies which could be effected is largely speculative, but there can be no doubt that they would be important and substantial.

While not denying that the transactions would result in substantial economies, the Antitrust Division takes the position that,

as no immediate rate reductions are proposed,\* accomplishment of such economies would be of no benefit to the public. Such position is untenable. Reduction in the cost of transportation service has been recognized as being a matter of public interest in numerous decisions of this Commission. Among other things, the act declares it to be the national transportation policy of Congress "to promote safe, adequate, economical, and efficient service." It is to be expected that permanent reduction in the cost of transportation service will be reflected eventually either in lower rates than would otherwise be applied, or in improvements in service, either of which would be in the public interest. So far as rates are concerned, this Commission has adequate powers under the act to protect the situation.

The unification would not result in any increase in aggregate fixed charges. Such charges of this nature as are assumed by applicant upon consolidation should prove less burdensome to it with its combined resources than to the individual carriers involved.

The Commission should find:

1. That the proposed transactions would result in improved transportation service, in that through movements of freight would be simplified and expedited; terminal facilities would be improved, the handling of shipments reduced, relations with shippers and public regulatory bodies would be simplified, and safe operation promoted.

2. That such transactions would result in more efficient and greater utilization of equipment, and provide a transportation system better fitted to meet the increased demand for transportation service than the carriers involved if operated independently.

3. That such transactions would result in substantial operating economies.

4. Assumption by applicant of the fixed charges of the carriers involved would not be contrary to the public interest.

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#### EFFECT ON EMPLOYEES

The proposed transactions are opposed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. It is alleged that this organization represents approximately 600,000 employees engaged as drivers, helpers, warehousemen, platform men, etc., and that a substantial number of said employees are engaged in interstate hauling operations.

\* Among other things, applicant's brief states that the unification is designed: "To effectuate economies of operation so that present rates may be maintained, lowered or held within reasonable competitive limits in the rapidly rising market of supplies and labor."

it is argued that the hardships to employees that would attend the proposed consolidation negate any benefits which would otherwise accrue therefrom. As of April 30, 1941, the carriers involved employed a total of 5,816 persons, including officers.

No evidence was introduced in support of the Brotherhood's contention that the transactions would be injurious to such employees. Applicant's officers assert that no employees would be dismissed as a result of the unification, and the evidence shows that motor carriers are presently experiencing difficulty in obtaining sufficient skilled employees. Considering the increasing demand for transportation service and the evident shortage of experienced personnel, the examiner is of the opinion that consummation of the transactions would not result in any substantial hardship to employees of the carriers involved, through displacement or otherwise. Any minor detriment to employees would be more than offset by the advantages which indirectly would accrue to them from the lower operating costs and greater stability of applicant as compared with the respective carriers involved.

The Brotherhood does not appear to be particularly apprehensive of the direct result of the transactions on the employees of the carriers but argues that, if this unification is approved, other comparable unifications will follow, the aggregate result of which will be to reduce the number of employees in the motor carrier industry, and that "it will become increasingly difficult for the Commission to predicate its decisions upon the facts peculiar to  
575 a given application for a merger". So long as existing law remains in effect, the extent to which motor carriers of substantial size may unify their properties will be wholly within the control of this Commission. Action upon any unification proposed in the future will, of course, be governed by the particular circumstances there present and the general economic conditions then existing. Argument that approval of the instant transactions would unduly restrict the Commission's judgment in passing upon future proposals is untenable.

The Commission should find that consummation of the proposed transactions would not result in such substantial injury to the carrier employees affected as to warrant denial of the instant applications.

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## DUAL OPERATIONS

Pursuant to the provisions of section 210 of the act, the Commission consistently has held that a person, or persons under common control, should not be permitted to transport the same commodities for one shipper as a contract carrier, and for another shipper as a common carrier, from and to the same points

or in the same general territory. See the Transport Co. case, and cases therein cited.

McCarthy has applications, Nos. MC-59866 and MC-59866 (Sub No. 1), pending under the "grandfather" clause of section 209 (a) for a permit covering certain contract-carrier operations. Operations under the first application have been discontinued and its dismissal requested by McCarthy, and it will, therefore, be unnecessary to consider same further herein. Under the second application, McCarthy seeks a permit for continuance of two separate operations, viz.: (1) Transportation of telephone and electrical equipment and supplies between points in Connecticut and Tottenville, N. Y., and (2) transportation of precious metals and supplies, and equipment used in connection therewith, between specified points in Connecticut, Massachusetts, New Jersey, New York, and Rhode Island. The parties have advised of their willingness that McCarthy cease the operations described under (1), *supra*, and that its "grandfather" application be amended accordingly. The proposed findings will be appropriately conditioned. The other operation is a specialized service conducted with armored vehicles and would not be competitive with any of the common-carrier operations here involved. Continuance of such operation after consummation of the proposed transactions appears unobjectionable.

United-Arbour Express, Inc., herein called United-Arbour, a wholly owned subsidiary of Consolidated, formerly operated in interstate or foreign commerce as a motor-vehicle contract carrier, and on March 29, 1938, in No. MC-14092, issuance of a permit to it was authorized covering operations of that character in the transportation of "such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business" between all points in an area in Connecticut bounded generally by New London, Torrington, Westport, and Long Island Sound. Consolidated and McCarthy are each authorized to transport the same commodities between many of the points served by United-Arbour. The instant application represented that such operation would be disposed of or discontinued by United-Arbour prior to consummation of the proposed transactions, and at the hearing it was shown that operations by it had actually been discontinued. However, the parties have not requested cancellation of United-Arbour's operating authority; and, in order to prevent possible creation of an objectionable dual operating situation, the proposed findings will be appropriately conditioned.

The Commission should find:

1. That the contract-carrier operation conducted by McCarthy in the transportation of telephone and electrical equipment and supplies is competitive with the common-carrier operations here involved, and the operation authorized to be conducted by United-Arbour would likewise be competitive with such common-carrier operations.

2. That unification of control in applicant of such common and contract-carrier operations would not be consistent with the public interest.

3. That any authority herein granted for acquisition of control of McCarthy should be upon condition that, prior to exercise thereof, McCarthy shall discontinue contract-carrier operations in interstate or foreign commerce in connection with the transportation of telephone and electrical equipment and supplies, and shall file an appropriate amendment to its application in No. MC-59866 (Sub No. 1) to eliminate therefrom all claim to rights to conduct such operations.

578 4. That any authority herein granted for acquisition of control of Consolidated should be upon condition that, prior to exercise thereof, United-Arbour shall file an appropriate petition with this Commission requesting cancellation of any authority it may possess to engage in operation in interstate or foreign commerce as a motor-vehicle contract carrier.

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#### CORPORATE SIMPLIFICATION

Many duplications exist in the operations of the carriers involved. Maintenance of separate corporations under common control, rendering substantially the same service, frequently has been condemned. Transport Co.—Control—Arrow Carrier Corp., supra, and cases therein cited. Apparently in recognition of the foregoing, applicant proposes to consolidate the operating rights and properties of all the carriers within one year from date of acquisition of control, and requests authority to accomplish such consolidation. Applicant's officers and directors are of the opinion that such a period of time would be required in order to establish complete consolidation on a sound basis without undue waste of assets and undue expense. Immediate consolidation of all the companies would result in substantial losses through expenses incurred for insurance and licensing, and it is planned to consolidate the properties with due regard to expiration dates of licenses and insurance in force. In order to license equipment most advantageously, some study of the placement of equipment throughout the system will be required. It is also pointed out



that some of the carriers involved possess certain rights to operate in intrastate commerce and that, in order to comply with State requirements, applicant will be required, prior to consolidation, to secure authority for transfer to it of such intrastate operating rights.

Considering the foregoing, it appears that, if a unification of these carriers is to be permitted, the best interests of the parties involved would be served by authorizing applicant to acquire control prior to consolidation, and that such action would not be inconsistent with the public interest, provided an appropriate condition is imposed to insure consolidation within a reasonable time. In the Transport Co. case the Commission expressed doubt as to its power to impose a condition which would require subsequent merger or consolidation of corporations of which applicant therein sought to acquire control. However, the  
580 subject was not fully explored and no finding was made with respect thereto, same not being necessary to disposition of the applications involved. Therefore, such statement should not be considered as necessarily controlling in the instant proceeding.

There can be no doubt that such a condition would be germane to the transactions involved because its purpose would be to prevent maintenance of a situation such as the Commission has found to be objectionable, and which otherwise might be sufficient reason for withholding favorable action on the application. The doubt with respect to the matter apparently arises from the fact that the condition would require action subsequent, rather than precedent, to exercise of authority granted. An examination of previous cases under section 5 discloses numerous instances in which the Commission has authorized transactions upon condition that the parties perform or omit certain acts in the future. Conditions have been imposed to require preservation of the separate corporate identity of an acquired line,<sup>9</sup> that a representative of such line be maintained at a certain locality,<sup>10</sup> that applicants keep open all routes and channels of trade via existing gateways,<sup>11</sup> that employees dismissed as a result of a lease be accorded compensation,<sup>12</sup> and, of particular interest here, that applicant agree and undertake to abide by such findings as the Commission might make in the future with respect to acquisition by applicant of the properties of other carriers.<sup>13</sup> The power of the Commission to impose conditions of such character has been sustained by the courts. *Atlantic Coast Line R. Co. v. U. S.*, 284 U. S. 288; *N. Y. Central*

<sup>9</sup> *Port, Worth Belt Ry. Co. Control*, 187 I. C. C. 88.

<sup>10</sup> *Alton R. Co. Acquisition and Stock Issue*, 175 I. C. C. 301.

<sup>11</sup> *Chicago R. I. & G. Ry. Co. Trustees' Lease*, 230 I. C. C. 181, 233 I. C. C. 21.

<sup>12</sup> *Southern Pac.*, (Texas and Louisiana Lines) Consolidation, 499 I. C. C. 17; *New York, C. & St. L. R. Co. and Erie R. Co. Control*, 224 I. C. C. 239.

581 Securities Co. v. U. S., 287 U. S. 12; United States v. Lowden, 308 U. S. 225. The Commission's authority to impose such conditions having been affirmed, it can hardly be questioned that it has power to enforce them. From the foregoing, it would appear that the Commission has ample power, if it should grant authority for acquisition of control, to impose, and if such authority were exercised to enforce, a condition requiring subsequent consolidation of the carriers involved.

The situation existing here is somewhat different from that which gave rise to the previously mentioned statement appearing in the Transport Co. case. There, applicant's plans concerning subsequent unification of the operating rights and properties of the carriers involved were too vague to permit of immediate authorization of some, and additional proceedings would have been required on that phase of the matter. However, in this proceeding authority is sought to effect a consolidation upon specific terms and conditions set forth in the application, and there is nothing to prevent consideration and disposition on the merits of the entire matter at this time.

The Commission should find:

1. That there are substantial duplications in the operations of the carriers involved and, under such circumstances, continuance of separate operations by them under common control would be uneconomical and inconsistent with the public interest.

2. That consolidation of such carriers into applicant can best be accomplished if applicant is permitted first to acquire control of them through stock ownership.

3. That any authority herein granted for applicant to acquire control of such carriers should be conditioned upon applicant's filing with the Commission, prior to the exercise of such authority, a written acceptance of the following condition, viz: Applicant shall consolidate, or cause to be consolidated, pursuant to the authority herein granted, all the operating rights and properties of the carriers, involved into itself for ownership, management, and operation, within one year from the date that applicant acquires control of any of such carriers.

The Antitrust Division contends that the transactions would unduly restrain competition in the motor-carrier industry. As noted, the sum of the highway miles covered by the regular routes of the respective carriers involved is 37,884. If the proposed

consolidation were effected, applicant would operate over 24,338 miles of regular routes, indicating a duplication between the carriers of 13,546 miles. As will hereinafter appear, the actual competition existing between the carriers involved is somewhat less than might be indicated by the duplicate highway mileage, by reason of restrictions in the service they are authorized to render and differences in the nature of the traffic handled.

Undoubtedly, substantial competition exists between certain of the carriers involved, and consummation of the instant transactions would eliminate such competition. However, such fact alone is not controlling. Section 5 was designed to permit unifications which might result in restraining competition within the meaning of the antitrust laws, where the disadvantages of such restraint were offset or overcome by other advantages to the public, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry. Thus, determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain, and advantages which would otherwise result from the unification. The advantages which might reasonably be expected to result are discussed elsewhere in this report. This chapter will be confined to a discussion of the extent of competition existing between the carriers involved, and competition afforded by other carriers which would not be affected by the unification. Although there is some territorial overlapping, such discussion, for convenience, will be divided into three parts, dealing respectively with the competitive situation in those portions of the territory here  
583 involved embraced within New England, the Middle Atlantic region (composed of New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and the District of Columbia), and the South. Where reference is made herein to carriers, unless otherwise indicated, it means motor-vehicle common carriers of property operating in interstate or foreign commerce.

New England Region: Consolidated and McCarthy are competitive substantially throughout Connecticut, Massachusetts, and Rhode Island. In the southeastern section of Massachusetts, McCarthy is relatively strong and Consolidated relatively weak, while a reverse situation exists in southern Connecticut. Consolidated is the only one of the carriers involved operating between New York City and New England points.

Lists of carriers not involved in the proposed unification which operate <sup>14</sup> in the considered territory show 359 carriers, of which 103 are Class I carriers. A few of the principal competitors are:

Adeley Express Company, Inc., New Haven, Conn.	14	\$1,750,000
Seaboard Freight Lines, Inc., New York, N. Y.		\$1,725,000
New England Transportation Company, Boston, Mass.	15	\$1,575,000
M & M Transportation Company, Somerville, Mass.		\$1,460,000
Stone's Express, Inc., Lynn, Mass.		\$1,068,000

Adeley Express Company, Inc., is authorized to operate as a common carrier of general commodities over a network of regular routes blanketing the States of Connecticut, Massachusetts, and Rhode Island and extending therefrom to Albany and New York, N. Y., and Philadelphia, Pa. It can serve every point in the New England territory served by Consolidated and McCarthy.

New England Transportation Company, which is controlled 584 by the New York, New Haven, and Hartford Railroad Company (Howard S. Palmer, James L. Loomis, and Henry B. Sawyer, trustees), has almost equal coverage in such territory, its routes extending therefrom to New York City and Poughkeepsie, N. Y. The latter's operations as a common carrier of general commodities are described in detail in New England Transp. Co., Common Carrier Application, 12 M. C. C. 461. Seaboard Freight Lines, Inc., a subsidiary of Keeshin Freight Lines, Inc., conducts operations of the same character over a network of regular routes extending to Syracuse, N. Y., on the west, Fitchburg and Boston, Mass., on the north and east, and Washington, D. C., on the south, with service to intermediate and numerous off-route points, including most of the principal points in the region under consideration. The operations of M & M Transportation Company and Stone's Express, Inc., are not so extensive as those just mentioned, but each of these carriers furnishes substantial competition in the considered territory. The former operates as a common carrier of general commodities between Boston, on the one hand, and Philadelphia, Pa., and Hudson, N. Y., on the other, serving, among other points, New York City, Springfield, Mass., Hartford, New Haven, and Bridgeport, Conn., points within 20 miles of Worcester, Mass., those within 30 miles of Provi-

<sup>14</sup> While the evidence clearly shows that many of the carriers included in the lists are actually operating at the present time, applicant's witnesses could not testify from personal knowledge that each and every one of them was so operating. However, as reflected by the records of this Commission, all carriers included are authorized to operate in the territory and between the points hereinafter indicated. With respect to Class I carriers, each of them filed an annual report with this Commission disclosing operations during the year 1940, and it may be assumed that operations are still being conducted by them. The lists do not purport to show all of the carriers authorized to operate in the territory.

<sup>15</sup> The amounts shown represent, in round figures, total operating revenues of the respective carriers during the year 1940. Information is not available to show the portion of the operating revenues of any carrier derived from operations in a particular area or between certain points.

<sup>16</sup> This figure represents revenues from freight operations; in addition, such carrier derived \$1,170,000 from passenger operations.

dence, R. I., and those within 35 miles of Boston. It possesses additional authority to transport certain special commodities, including packing-house products from Boston to Baltimore, Md. Stone's Express, Inc., operates as a carrier of general commodities over regular routes between Boston and New York and between certain Massachusetts points, and over irregular routes between points in eastern Massachusetts.

One of the exhibits introduced in evidence analyzes the competition afforded by 294 carriers not involved in the proposed transactions, including 84 Class I carriers, over direct routes between numerous points in the territory in which Consolidated and McCarthy operate, 269 combinations of points being considered.

Such exhibit excluded from consideration services rendered 585 over irregular routes, or in the transportation of special commodities only, or general-commodity service through a combination of two or more carriers. The 25 combinations of points shown below have been selected as representative of the 269 treated in the exhibit. Opposite each combination is shown the number of Class I carriers, of the 84 treated, which afford competitive service<sup>13</sup> between the points indicated.

Between	Class I Carriers
Albany, N. Y., and—	
Boston, Mass.	6
New Bedford, Mass.	2
New Haven, Conn.	3
New London, Conn.	3
Providence, R. I.	3
Springfield, Mass.	6
Boston, Mass., and—	
Amesbury, Mass.	8
Bridgeport, Conn.	22
Hartford, Conn.	25
New Haven, Conn.	25
New London, Conn.	13
North Adams, Mass.	7
Providence, R. I.	32
Springfield, Mass.	32
Torrington, Conn.	6
New Haven, Conn., and—	
Fitchburg, Mass.	8
North Adams, Mass.	5
Providence, R. I.	18
New London, Conn., and—	
Fitchburg, Mass.	4
Greenfield, Mass.	3
Springfield, Mass.	4
Providence, R. I., and—	
Danbury, Conn.	5
North Adams, Mass.	3
Springfield, Mass., and—	
Bridgeport, Conn.	21
Brockton, Mass.	10

Another exhibit analyzes the competition afforded by 76 general-commodity carriers, including 39 Class I carriers, between various

<sup>13</sup> See footnote 13.



points in the considered New England territory, on the one hand, and New York City, Jersey City, and Newark, N. J., and Philadelphia, Pa., on the other. Among other combinations treated, it is shown that of the 39 Class I carriers considered, 22 operate between Boston and New York City, and 6 operate between Boston and Philadelphia.

586 The operating revenues in 1940 of 107 Class I motor carriers of property reporting to the Commission, whose principal operations are in the New England region (composed of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), totalled \$40,082,627.<sup>17</sup> The aggregate revenue in 1940 of Consolidated and McCarthy was \$6,467,173.

Middle Atlantic Region: Consolidated and Moran are competitive between the principal points in New York State. None of the other carriers involved have any operations of importance in that State outside of the metropolitan area of New York City. Moran's routes are considerably more extensive than, and entirely duplicate, Consolidated's routes in this territory, and extend therefrom to Cleveland, Ohio, and to numerous points in northern Pennsylvania not served by any other of the carriers involved. Consolidated and Moran each operates from Binghamton, N. Y., to Philadelphia. Moran also has a direct route from Binghamton through Scranton, Pa., to New York City.

Lists of carriers which operate in the area served by Consolidated and Moran show 205 carriers, of which 60 are Class I carriers. Some of the principal competitors and their operating revenues in 1940 are as follows:

Akron-Chicago Transportation Co., Inc., Akron, Ohio.....	\$347,000
Interstate Motor Freight System, Detroit, Mich.....	9,907,000
Keeshin Motor Express Co., Inc., Chicago, Ill.....	5,902,000
Niagara Motor Express, Inc., Syracuse, N. Y.....	610,000
Onondaga Freight Corp., Syracuse, N. Y.....	438,000

Akron-Chicago Transportation Co., Inc., operates as a general-commodity common carrier in Illinois, Indiana, Ohio, Pennsylvania, and New York. In New York a network of routes covers practically all of the State west of Watertown, Utica, and Binghamton. The greater portion of the operations of Interstate Motor Freight System and Keeshin Motor Express Co., Inc., respectively, is in the Central and Middle Western States. Each operates between principal points in New York State but does not serve as wide a territory therein as either Con-

<sup>17</sup> Source of data with respect to revenues of carriers reporting to the Commission, pursuant to stipulation of the parties: Revenues, Expenses and Statistics of Class I Motor Carriers of Property, Statement No. Q-800, Year 1940, Interstate Commerce Commission, Bureau of Statistics. This compilation contains the following statement: "The total annual revenues of Class I carriers of property are probably less than half of the grand total for all motor carriers of property whose rates and service are subject to the jurisdiction of the Interstate Commerce Commission."

solidated or Moran. Keeshin Motor Express Co., Inc., connects with its affiliate, Seaboard Freight Lines, Inc., at Syracuse and, in conjunction, the two carriers render through service to New York City and New England points. Niagara Motor Express, Inc., operates entirely within New York State as a general-commodity common carrier over regular routes principally between Buffalo and Niagara Falls and Albany, via Rochester, Syracuse, and Utica, between Buffalo and Jamestown and Corning, between Rochester and Elmira and between Syracuse and Binghamton, with service to numerous off-route points in that area. Onondaga Freight Corp. transports general commodities over regular routes extending from Buffalo to Boston, via Rochester, Syracuse, Utica, and Albany, and from Albany to New York, serving all intermediate points. It also has authority to transport a wide variety of specified commodities<sup>18</sup> over irregular routes from and to numerous points in the New York area.

Taken from the standpoint of service between representative points in the area in which Consolidated and Moran compete, and considering only those carriers included in the lists referred to, which do not purport to be complete, the following shows the number of Class I carriers not involved in the proposed unification which operate over competitive routes between the points indicated:

Between	Class I Carriers
Albany, N. Y., and—	
Binghamton, N. Y.	11
Buffalo, N. Y.	18
Elmira, N. Y.	14
New York, N. Y.	26
588 Binghamton, N. Y., and—	
Buffalo, N. Y.	21
New York, N. Y.	20
Syracuse, N. Y.	18
Utica, N. Y.	13
Buffalo, N. Y., and—	
New York, N. Y.	20
Philadelphia, Pa.	49
Syracuse, N. Y.	24
Elmira, N. Y., and—	
Rochester, N. Y.	18
Syracuse, N. Y.	16
Philadelphia, Pa., and—	
Syracuse, N. Y.	17
Utica, N. Y.	16

The greater part of the operations here considered is embraced within New York State, and competition from carriers operating solely in intrastate commerce is of greater importance than in the other areas treated. Of Moran's revenues, 45 percent accrues

<sup>18</sup> Paper, candles, chemicals, fruits, vegetables, canned and preserved foodstuffs, paint and related commodities, petroleum products in containers, and merchandise dealt in by retail food stores.

from transportation of freight moving in intrastate commerce. Considerable competition is also afforded on traffic moving in interstate commerce, by carriers which operate physically within New York, under the exemption from the certificate requirements of the act contained in the second provision of section 206 (a).

Some competition, although of less relative importance, exists between the carriers involved in portions of the Middle Atlantic region other than New York State. Barnwell, Horton, and Southeastern operate in this territory but are principally concerned with traffic moving between points therein and the South, the situation respecting which will be discussed in the following subdivision of this chapter.

Barnwell's routes extend northward to Scranton, Pa., and New York City. On its main route between Washington and New York, via Baltimore and Philadelphia, it is authorized to serve all intermediate and certain off-route points. Service to points on its other routes in this region is generally restricted to traffic originating at or destined to points in Virginia or south thereof.

At Harrisburg, Reading, and Allentown, Pa., it is restricted 589 to delivery of traffic originating at New York. Southeastern's routes also extend to Scranton and New York, but it may not serve any point in this region except on traffic originating at or destined to Roanoke, Va., or points south thereof. Horton's routes extend northward in this area to Pittsburgh, Pa., Scranton, and New York, and it is authorized to serve without restriction Washington, Baltimore, a few other Maryland points, New York City, a number of Pennsylvania points including Philadelphia, Trenton, and New Brunswick, N. J., and points in northern New Jersey in the vicinity of New York City; otherwise, it is generally restricted to traffic moving to or from points south of the Potomac River. Consolidated's routes extend from New York to Philadelphia and Asbury Park and Atlantic City, N. J. With respect to such New Jersey points, it is not competitive with any of the other carriers involved. Arrow operates between the metropolitan area of New York City and numerous points in eastern Pennsylvania, but does not serve Philadelphia. Its routes extend northward to Binghamton, N. Y. Between the latter point and New York City it is in competition with Consolidated and Moran, and certain of its other routes are paralleled by those of Barnwell and Horton. Arrow is primarily concerned with traffic moving between the metropolitan area of New York and Pennsylvania points. It is the only one of the carriers involved having intrastate rights in Pennsylvania. It would be valuable to the unified operation as a feeder and connecting line.

Numerous carriers operate in this territory. An incomplete list of those competing with Arrow shows 148 carriers, of which 44 are Class I carriers. Many of those included in the lists of carriers operating in New York also operate in this area. Some of the carriers whose principal operations are in the area are:

The Davidson Transfer & Storage Co., Baltimore, Md.	\$1,576,000
Horlacher Delivery Service, Inc., Philadelphia, Pa.	1,062,000
Motor Freight Express Inc., York, Pa.	799,000
Richards Motor Freight Lines, Scranton, Pa.	828,000
York Motor Express, York, Pa.	1,302,000

<sup>1</sup> The amount shown represents this carrier's operating revenues in 1939, 1940 figures not being available.

590 Motor Freight Express operates as a common carrier of general commodities throughout most of the area here under consideration, its routes extending from New York on the north to Pottsville and Harrisburg, Pa., on the west and Washington on the south. York Motor Express conducts similar operations in the same general territory. Richards Motor Freight Lines conducts operations of the same character over a network of regular routes covering the eastern Pennsylvania points served by the carriers here involved, as well as the principal points served by Moran in New York State. Davidson transports general commodities over regular routes extending from Washington to New York, via Philadelphia, and over irregular routes between its terminal areas of New York, Philadelphia, Baltimore, and Washington, on the one hand, and, on the other, points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and northern Virginia. Horlacher Delivery Service, Inc., conducts similar operations in the territory extending from Norfolk and Richmond, Va., to New York City. It serves substantially, if not all, points in Delaware and eastern Pennsylvania served by the carriers involved. Other carriers whose principal operations are in this territory and are described in Appendix A of the Transport Co. case are: Branch Motor Express Company, Kirby & Kirby, Inc., The Middlesex Transportation Company, Miller Transport Co., The Motor Haulage Company, Inc., New York and New Brunswick Auto Express Company, Freedman Motor Service, Inc., Pyramid Motor Freight Corporation, Shein's Express, Inc., and Smith and Solomon Trucking Company.

The following shows the number of Class I carriers, of those named in the lists referred to, and not involved in these trans-

actions, which operate over competitive routes between the representative points indicate:

591	Between	Class I Carriers
	New York City and—	
	Allentown, Pa.-----	28
	Baltimore, Md.-----	24
	Harrisburg, Pa.-----	24
	Philadelphia, Pa.-----	39
	Scranton, Pa.-----	24
	Sunbury, Pa.-----	19
	Washington, D. C.-----	22
	York, Pa.-----	21
	Baltimore, Md., and—	
	Harrisburg, Pa.-----	19
	Scranton, Pa.-----	13

The operating revenues in 1940 of 283 Class I motor carriers of property reporting to the Commission whose principal operations are in the Middle Atlantic region totalled \$97,449,156.<sup>19</sup> The revenues in 1940 of Arrow and Moran, which are the only carriers of those involved whose principal operations are in this region, totalled \$4,282,861.

**Southern Region:** The carriers involved whose principal operations are in the Southern region are Barnwell, Horton, Southeastern, and Transportation. Because of restrictions in its operating authority, Southeastern is only slightly competitive with any of the other carriers involved. While its routes are generally paralleled by those of Barnwell and Horton north of Roanoke, Va., it may transport only traffic originating at or destined to Roanoke or points south thereof. Aside from Roanoke, which is served by Barnwell, the only point south thereof on Southeastern's routes served by either Barnwell or Horton is Winston-Salem, N. C., which is served by Southeastern from the west and by Barnwell and Horton from the south and east. Southeastern's routes parallel those of Transportation between Bristol, Va., and Kingsport and Johnson City, Tenn., 24 and 25 route miles, respectively. Transportation's operations south of Atlanta, Ga., and from points in North and South Carolina to points in Tennessee are not competitive with those of any of the carriers involved. It competes with Horton between Atlanta and Charlotte, N. C. Between Charlotte and Great Falls, S. C., and other points in North Carolina, including Burlington, Greensboro, and Winston-Salem, its operations are competitive with Barnwell and Horton, and it competes with Barnwell between Asheville, N. C., and Charlotte and Winston-Salem. The routes of Barnwell and Horton are generally parallel from Great Falls, S. C., on the south, to New York City and Scranton, on the north.

<sup>19</sup> See footnote 17.



Barnwell's routes between Greensboro, N. C., and Roanoke, Va., and between McColl, S. C., and Wilmington, Del., via Norfolk, Va., and the eastern shore of Maryland are not duplicated by those of any of the other carriers involved.

Lists of carriers operating in this territory, which as in the case of the other lists referred to do not purport to be complete, show 289 carriers, of which 67 are Class I carriers. These lists include some carriers competing with the southern carriers north of Washington only. Some of the principal competitors and their operating revenues in 1940 are:

Akers Motor Lines, Inc., Gastonia, N. C.	\$ 923, 000
Atlantic States Motor Lines, Inc., High Point, N. C.	729, 000
Brooks Transportation Company, Inc., Richmond, Va.	1, 350, 000
Harris Brothers Transfer Company, Charlotte, N. C.	518, 000
The Mason & Dixon Lines, Inc., Kingsport, Tenn.	1, 918, 000
Roadway Express, Inc., Akron, Ohio	2,224,000

Akers Motors Lines, Inc., operates as a common carrier of general commodities over irregular routes. It is authorized to transport such commodities between Gastonia, N. C., and points within 25 miles thereof, on the one hand, and points within 100 miles of Atlanta and 5 other Georgia points, on the other, and between said Georgia points and points in North and South Carolina, on the one hand, and, on the other, all points in New Jersey, Connecticut, Rhode Island, Massachusetts, and the District of Columbia, numerous points in Maryland, Delaware, Pennsylvania, and New York (including New York City), and points within 25 miles of Akron, Ohio. Atlantic States Motor Lines, Inc., conducts similar operations over a network of regular routes extending from Columbia, S. C., and Atlanta, on the south, and Asheville and Roanoke, on the west, to New York City. It also transports general and special commodities over irregular routes, generally between southern points, on the one hand, and points in the Middle Atlantic States, on the other.

593 Brooks Transportation Company, Inc., transports general commodities over regular routes, generally parallel to those of Barnwell and Horton, between Winston-Salem and Greensboro, N. C., and Roanoke, Va., on the one hand, and New York City, on the other. Harris Brothers Transfer Company conducts operations of the same character over regular routes between Charlotte and New York over several routes, with service to a number of Pennsylvania points, including Philadelphia. The Mason & Dixon Lines, Inc., competes with most of the operations here involved between Atlanta and New York, its routes extending from Atlanta and Charlotte on the south to Scranton and New York City, on the north. Roadway Express, Inc., operates as a common

carrier of general commodities in 24 States. So far as concerned here, it operates from Columbus, Ga., to New York City, via Atlanta, Greenville, S. C., Charlotte, Richmond, Baltimore, and Philadelphia. It also conducts irregular-route operations in North and South Carolina. Other carriers whose principal operations are in this territory and are described in Appendix A of the *Transport Co.* case are: Hampton Roads Transportation Company, Mundy Motor Lines, Rutherford Freight Lines, Incorporated, Super Service Motor Freight Company, and The Wright Line.

The following shows the number of Class I carriers, of those named in the lists referred to and not involved in the proposed transactions, which operate over competitive routes between representative points in the Southern region, and between points therein and certain points outside of such region. Service is considered only between points served in common by two or more of the carriers involved; i. e., only in those instances where there will be a lessening of competition.

	Class I Carriers
Between	
Asheville, N. C., and—	
Burlington, N. C. ....	8
Charlotte, N. C. ....	11
Atlanta, Ga., and—	
Burlington ..... 7	
Charlotte ..... 10	
504 Burlington and—	
Great Falls, S. C. ....	7
Fayetteville, N. C. ....	14
Charlotte and—	
Harrisburg, Pa. ....	11
Lynchburg, Va. ....	13
New York, N. Y. ....	13
Philadelphia, Pa. ....	13
Richmond, Va. ....	17
Scranton, Pa. ....	9
Washington, D. C. ....	14
Winchester, Va. ....	11
Lynchburg and—	
New York ..... 8	
Richmond ..... 10	
Washington ..... 9	
Richmond and—	
Harrisburg ..... 11	
New York ..... 16	
Washington ..... 20	
Roanoke and—	
Harrisburg ..... 7	
New York ..... 8	
Scranton ..... 4	
Washington ..... 10	
Winchester ..... 10	

The operating revenues in 1940 of 92 Class I carriers of property reporting to the Commission whose principal operations are in the Southern region (composed of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) totalled \$49,051,190.<sup>20</sup> The revenues in that year of Barnwell, Horton, Southeastern, and Transportation totalled \$7,955,230.

General: The foregoing clearly shows that if the proposed transactions were approved and consummated, there would be ample competitive motor-carrier service throughout the territory involved. In addition, all of the principal points and many others are served by one or more rail carriers. Competition is also afforded by motor-vehicle contract carriers, and by carloading and forwarding companies. The tabulations showing service between representative points include only carriers rendering single-line service, although effective competition frequently is afforded such carriers by combinations of two or more carriers through interchange. Nor do the tabulations reflect competition of overhead operations. For example, Spector Motor Service, Inc., which operates between many points in the Middle Atlantic and New England regions, on the one hand, to points in the Central States, on the other, is not included in the tabulations although actually operating between many of the points shown.

It seems that the Antitrust Division is more apprehensive over what it believes would be the indirect effect of the consolidation upon competition, than it is over the direct elimination of competition between the carriers involved. It alleges that the consolidation would bring into being the largest common carrier of property by motor vehicle in the United States, which appears to be true, and contends in effect that applicant, because of its extensive route coverage and large total revenues, would be so dominant in the territory that it would smother competition of remaining independent motor carriers. Experience has not demonstrated that such result would be likely to follow. There are a number of large property motor-carrier systems presently in existence, most of which operate in the Middle Atlantic and Central States, notably the Keeshin system, Interstate Motor Freight System, and U. S. Truck Lines system. There is no indication that anything approaching a monopoly has resulted in that territory from the formation and operation of those systems. Considering the great number of motor carriers presently operating, the small

<sup>20</sup> See footnote 17.

amount of capital required to enter the motor transportation field, and advantages in certain respects which smaller motor carriers have over larger ones through their more intimate relations with shippers and ability to render a more personalized service, it would seem that monopoly is little to be feared at this stage of the development of the trucking industry. It is not believed that applicant would be able to obtain any greater portion of the available traffic than the carriers involved now handle. It seems more likely that the proportion would be smaller. As shown by the testimony

596 of shipper representatives, there is a tendency among many shippers to divide traffic among competing lines. In the opinion of the general manager of one of the intervening motor carriers which competes with Barnwell and Horton, his company would be in a better position from a solicitation standpoint if those carriers were merged.

The Antitrust Division further argues that the combined volume of business of the carriers involved would give applicant such great bargaining power with connecting motor carriers for interline business that it could secure not only the larger portion of the traffic, but could demand as exchange the premium or higher rated freight; and that there would be created in applicant a "bottle neck" through which, in many cases shippers must send their traffic. Each of these contentions is based upon an incorrect premise that applicant would have the only available service between strategic points and that independent lines would be forced to interchange with it. As has been shown a carrier would have a choice of several carriers other than applicant with which to make interchange arrangements, and if not treated fairly would, no doubt, favor such other carriers. The bargaining power of applicant would necessarily have to be spread among numerous connecting lines and in the aggregate would be no more, and probably would be less, than that of the independent lines. Applicant would have little to gain and much to lose by adopting an unreasonable policy with respect to interchange, and its officers have expressed their intention of maintaining existing joint-rate and through-rate arrangements.

It is also contended that the consolidation would result in diversion of interchange traffic, presently delivered by the carriers involved to other connecting lines, to such an extent as to adversely affect those lines. It is no doubt true that applicant would haul unrouted freight to destination, when possible to do so; in other words, it would not short-haul itself. However, the traffic it would divert from connecting carriers probably would be equalized, to a large degree at least, by traffic which would be

597 diverted from it to such lines. To illustrate, a carrier operating between Boston and New York and presently interchanging with Barnwell at the latter point for southern destinations, after consummation of the proposed consolidation, would be likely to deliver traffic controlled by it to some other independent line rather than to applicant, which would then be a competitor of the delivering carrier.

The large size of a motor carrier which would result from a unification alone does not constitute sufficient ground for denial of an application. Application of such a policy would tend to freeze the motor-carrier industry at its present level. Such industry, compared with rail and water transportation, is still in its infancy, and arbitrary restrictions upon its natural development into large units would not appear to be in the public interest. There are many thousands of motor carriers of property subject to the Commission's jurisdiction. Many of these are very small, and, no doubt, small motor carriers will continue to have their place in the industry. On the other hand, it would seem that large motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry. Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the national transportation policy, as declared in the act, it cannot be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need of unifications in the trucking field is more apparent than in the case of railroads, which have already had many years of development. With respect to motor-vehicle passenger carriers, integration into large systems is considerably more advanced than in the trucking industry.

At the conclusion of the hearing, the Antitrust Division moved that all of the motor-vehicle common carriers of property  
598 interchanging freight in the metropolitan area of New York, Baltimore, and Philadelphia, including those lines involved in the proposed unification as well as others, be required to furnish the Commission information showing the tonnage received from and delivered to connecting carriers in New England and New York State for the last six months of 1940. Aside from the doubtful propriety of entering such a general order in a proceeding of this nature, concerning which no opinion is expressed, and the fact that such order would place a great physical



and financial burden upon carriers not parties to this proceeding, it is not believed that such information is essential to a determination of the issues involved. Accordingly, the motion should be denied.

The Commission should find:

1. That, if the proposed transactions were consummated, there would remain adequate motor-carrier competition between the points in the territory involved with respect to which there would be any elimination of competitive service as a result of such transactions.

2. That, between the principal points involved, substantial competition would be afforded the unified operation by rail carriers.

3. That the proposed transactions would not result in an undue restraint of competition.

Holders of applicant's common and preferred stock would be entitled to one vote for each share held. The preferred stockholders would be entitled to cumulative dividends of 6 percent per annum before any dividend are paid on the common stock and, in the event of liquidation, to \$105 per share plus accumulated dividends before distribution of any amount to common stockholders. At the option of the holders, preferred stock is convertible into common stock, as follows: During the first three years from date of issue, 4 of common for 1 of preferred; during the next three years, 3½ for 1; and thereafter, 3 for 1. Applicant may redeem the preferred stock within 5 years from date of issue at \$110 per share, and thereafter at \$105 per share, plus accumulated dividends in each instance.

Consummation of the contracts for acquisition of control of the carrier and affiliated non-carrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having a total par value of \$4,553,543. Of these shares, 1,107 of preferred and 15,472 of common, issuable to Barnwell Warehouse, would be subsequently cancelled, thus leaving outstanding 37,942 shares of preferred and 633,171 shares of common stock, having a total par value of \$4,427,371. As of April 30, 1941, the aggregate net worth of the corporations involved, according to their books, was \$5,077,992. After making adjustments as provided in the contracts, the aggregate net worth would be \$4,900,248.

Authority is sought by applicant under section 214 to issue (1) stock as set forth above to consummate the contracts for acquisition

of control, (2) necessary common stock, from time to time as required, in conversion of its preferred stock, and (3) 15,000 shares of preferred stock, to be offered and sold to the public, the proceeds of which would be used for working capital and general corporate purposes.

600 The highest conversion rate provided for is four shares of common for one of preferred. At that rate, to convert all preferred stock proposed to be issued, 54,049 shares, would require 216,196 shares of common stock. However, it is unnecessary to authorize issuance of common stock to convert the preferred stock deliverable to Barnwell Warehouse, which would be subsequently cancelled. Eliminating any amount for such purpose, the maximum number of shares of common stock required for conversion purposes would be 211,708, and the total amount of common stock for which authority would be required would be 860,411 shares.<sup>21</sup>

The 15,000 shares of stock proposed to be offered to the public would be sold at not less than par. No commitment with respect to such sale has been made and no underwriting agreement entered into. It is proposed that any underwriting agreement entered into shall be subject to the approval of the Commission, and the recommended findings will be conditioned accordingly. Sale at par of such stock would produce \$1,500,000. The proceeds would be used principally to increase cash account and to improve the ratio between current assets and current liabilities. As of April 30, 1941, the aggregate current liabilities and current assets, respectively, of the companies involved were approximately equal. Officers of each of the carriers testified to a present lack of adequate working capital, which is attributable, in part at least, to the large increase in their volume of business. A portion of such sum would be used for purchasing additional equipment and retiring outstanding obligations. Assuming unification in applicant of the properties involved, the addition of \$1,500,000 to its working capital is warranted, and issuance of stock for that purpose should be approved. Such addition would greatly improve its financial position and make it better able to withstand any recession  
601 in business that might occur. The dividend requirement upon all preferred stock proposed to be issued, including that issued to Barnwell Warehouse and subsequently retired, would be \$324,294, which is about one-half of the companies' aggregate

<sup>21</sup> The section 214 application, as amended, seeks authority to issue 880,311 shares of common stock. Such request is apparently based upon a miscalculation, as the maximum requirement, before elimination of common stock for conversion of preferred stock issuable to Barnwell Warehouse, would be 864,839.

net income, after provision for income taxes, in 1940, and about one-third of such net income for 1939.

Pro forma balance sheet statement of applicant as of June 30, 1941, giving effect to consolidation into itself of the companies involved and to the issuance of securities as proposed, and reflecting elimination of all intangible items presently carried on such companies' books, shows assets<sup>22</sup> aggregating \$10,950,946, consisting of: Current assets \$4,263,616, including cash \$1,956,858, working funds \$68,693, accounts receivable, less reserve for uncollectible accounts; \$1,372,332, and material and supplies \$667,172; tangible property, less depreciation, \$5,516,399; organization expense \$107,136;<sup>23</sup> investments and advances \$176,204; and deferred debits \$887,591, principally prepaid tires \$487,553. Liabilities would be: Current liabilities \$2,827,373, chiefly accounts payable \$1,243,959 and taxes accrued \$726,186; advances payable \$127,111; equipment obligations \$867,336; other long-term obligations \$397,406; reserves \$197,644, including injuries, loss and damage reserves \$75,283, and reserve for income taxes \$108,673; deferred income \$62,353; capital stock—preferred \$5,294,200 and common \$704,651;<sup>24</sup> and unearned surplus \$472,872.

The foregoing reflects a capitalization of \$7,263,593, comprised of capital stock \$5,998,851, and equipment and long-term obligations \$1,264,742. The following capitalizable assets appear in support of such capitalization:

602	Cash	-----	\$1,956,858
	Working funds	-----	68,693
	Material and supplies	-----	667,172
	Tangible property	-----	5,516,399
	Prepaid tires	-----	487,553
	Total	-----	8,696,675

The total shown would be \$1,433,082 more than applicant's capitalization. Considering all the circumstances, including the past earnings of these companies, the proposed capitalization does not appear to be excessive.

The National Industrial Traffic League, herein called the League, contends that the situation here with respect to capitalization is similar to that presented in the Transport Co. case and would require the same conclusion. While the reasoning behind such contention is not clearly defined, it is argued in effect that

<sup>22</sup> For the purpose of such balance sheet valuation of assets was adjusted in accordance with the contract provisions previously described. The total value would be slightly higher if book values were used. Assets and liabilities of the companies involved are as of April 30, 1941. Past earnings of these companies would indicate that their net worths would be greater now than as of April 30, 1941.

<sup>23</sup> Represents \$8,136 expended as of June 30, 1941, \$9,600 for data purchased from The Transport Company, and \$30,000 estimated additional expenditures for prosecution of instant applications and completion of applicant's organization.

<sup>24</sup> Includes 11,278 shares of common stock issued by applicant subsequent to June 30, 1941.

the common stock would have an actual future value greater than its par value, and would subsequently find its way into the hands of the public at such greater value; that using such future value instead of par value in determining applicant's capitalization, such capitalization would not be supported by tangible assets and, therefore, is objectionable. Upon analysis, the unsoundness of such contention is readily apparent.

If any value greater than book value be attributed to applicant's common stock, it must necessarily be based upon intangible assets and past and prospective earnings of the carriers involved. Obviously, it would be inconsistent and unjust to consider intangibles and earnings for the purpose of determining the value of applicant's stock, and thus, under the League's theory, the amount of its capitalization, and then to find that such capitalization is excessive because supported by intangibles and earnings. In effect, this is what the Commission is asked to do. Following the League's theory, a carrier's capitalization would fluctuate with the market value of its stock, and a carrier with poor earnings whose stock was selling at a discount could more easily justify issuance of additional securities than a carrier with equal assets and good earnings whose stock was selling at a premium.

603 It should be emphasized that applicant is assigning no value to its common stock, other than par value, and is not proposing to sell any of such stock to the public. Thus, the situation is radically different from that existing in the Transport Co. case, as illustrated by the following excerpts from the majority decision and the concurring expression of Chairman Eastman, respectively:

"The par value of the securities would not exceed the value of such [tangible] assets, but we cannot ignore the fact that it is proposed, and it would be necessary in order to finance the transactions, to sell the common stock at prices 20 or more times the par value.

"If we approve the proposed unification, therefore, it will be with a full understanding of the fact that it cannot be carried into effect without sale by applicant of a large amount of its common stock at \$20 per share. The inference will be that we believe that this stock not only can be but should be sold at such a price, as being within its reasonable value. No doubt effective use of such an inference would be made in selling the stock to the public, as is contemplated, at a price in excess of the \$20 per share."

Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public

wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission had found or said. Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and, contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations.

The Antitrust Division contends that any securities offered to the public should be sold pursuant to competitive bids. Considering the type of securities involved, the newness of the enterprise, and the unfamiliarity generally of the public with motor carrier securities, there is grave doubt whether marketing of the securities through competitive bids would be feasible. It is believed that the proposed condition, requiring approval by the Commission of any agreement entered into for the disposition of the securities, will adequately protect the situation.

604 Question arises as to whether the great disparity, from the standpoint of par value, between the voting rights of the preferred and common stock proposed to be issued would be consistent with the public interest. The holder of a share of \$1-par-value common stock would have equal voting power with the holder of a share of \$100-par-value preferred stock. Preferred stockholders as such would be unable to elect a single member of applicant's board of nine directors. It has been found that concentration of control of a carrier in the hands of persons having a relatively small investment therein is not always compatible with the public interest.<sup>25</sup> It must be remembered, however, that the par value of applicant's common stock would not, and does not purport to, represent the amount of investment, but rather an undivided interest in applicant, undefined in amount, derived from the contribution to applicant, by the persons receiving such stock, of going businesses. It should also be recognized that, in view of the preferential treatment of preferred stockholders, common stockholders are ordinarily entitled to control. Nevertheless, considering the amount of preferred stock which would be outstanding, in the examiner's opinion the public interest requires that holders of such stock be given greater voting power than is proposed. Accordingly, a condition to obtain such result will be incorporated in the proposed findings. Upon the basis of the proposed stock issue, such condition would assure the preferred stockholders the power to elect one-third of the members of applicant's board of directors, as now constituted, so long as dividends on preferred stock do not become three years in arrears. If such dividends become in arrears for three years or more, the

<sup>25</sup> Compare *Consolidated Freight Lines, Inc.—Stock*, 5 M. C. C. 749, 755; *Unification of Southwestern Lines*, 124 I. C. C. 401, 438.



preferred stockholders would have the power to control applicant until such arrears are paid. While somewhat arbitrarily arrived at, such arrangement would appear to be equitable under all the circumstances.

605 Upon consolidation into itself of the companies involved, applicant would be required to assume all of their liabilities. Certain of these companies have outstanding securities with respect to which assumption of obligation by applicant would require authority under section 214. It is probable that some of these securities will be liquidated prior to actual consolidation. Applicant represents that, prior to consolidation, it will make appropriate application for requisite authority under section 214 to assume obligations with respect to any securities of the companies involved which then may be outstanding.

The Commission should find:

1. That acquisition of control of the carriers involved in No. MC-F-1612 and affiliated noncarrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having an aggregate par value of \$4,553,543.

2. That the aggregate net worth of the corporations of which control would be acquired is approximately \$4,900,000.

3. That, if the proposed acquisitions of control were consummated, an addition to applicant's capital of \$1,500,000 for working capital and other corporate purposes would place it, and the carriers involved upon a sounder financial basis, and is reasonably necessary for that purpose.

4. That upon consummation of the proposed transactions applicant would have adequate capitalizable assets to support the securities proposed to be issued.

5. That any authority herein granted for the issuance of securities should be conditioned as follows:

- (a) Prior to the exercise of any such authority applicant's articles of incorporation shall be amended (and evidence of such amendment furnished the Commission) so as to provide that holders of its preferred stock shall be entitled to six votes for each share of stock held, in lieu of one vote as presently provided, and that, in the event of default in payment of dividends upon such preferred stock for three years or more, thereafter, until all dividends in arrears on such stock are paid, the preferred stockholders, voting separately as a class, shall be entitled at any stockholders meeting held for that purpose to elect a majority of applicant's board of directors.

- (b) No preferred stock shall be issued for sale to the public as proposed until any agreement or agreements entered into or pro-

posed to be entered into, by applicant for the sale or underwriting of such stock shall first be approved by this Commission.

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## GENERAL

The League refers to the plan adopted by the Commission on December 9, 1929, 159 I. C. C. 522, for the consolidation of railroads, and asserts that the consolidation here proposed does not conform to the pattern specified therein, particularly with respect to size and territorial and geographical extent. Congress has seen fit to repeal the former provisions of section 5 requiring railroad consolidations to conform to such a plan. Moreover, it hardly seems necessary to point out that considerations which might govern in the consolidation of railroads differ radically from those to be applied to motor carriers. Considering the practice of railroads with respect to exchanging equipment and the necessity even under single ownership of switching cars and making up trains at important junction points, the advantages to be derived from inter-territorial service by a single railroad are not so readily apparent as in the case of motor carriers, whose smaller transportation unit makes possible a more flexible service. Many motor carriers presently render single-line service between the Southern, Middle Atlantic, and New England regions, and such service is also rendered through interchange by combinations of motor carriers. Undoubtedly, there is a substantial movement of freight between such regions. Applicant's routes, in general, conform to the natural flow of freight along the Atlantic seaboard, and approval of the proposed consolidation would not disrupt existing routes and channels of trade, but would make possible more expeditious and economical handling of traffic moving over such routes.

The League also contends that the advantages inherent in highway transportation have to do largely with short-hauls and, inferentially at least, that approval of the proposed consolidation would foster uneconomical long-haul transportation. As to what is an economical haul for a motor carrier cannot be measured by distance alone. Many other factors must be taken into consideration, such as the kind of roads and topography of the country to be traversed, the products to be hauled, the urgency of delivery, and the availability of other methods. In many cases what was considered an uneconomical haul a few years ago is now considered economical; and, no doubt, hauls that are considered uneconomical today will not be considered so within a few more years. The proposed unification would encourage long-haul traffic only to the extent that, through the unification, applicant might be able to offer a better service, or service at lower rates, than the

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independent carriers can now offer. If "uneconomical" long-hauls are to be discouraged, the most appropriate means of doing so would be through the fixing of compensatory rates and not through arbitrary limitation of the route mileage over which a carrier might operate. Such a limitation would fail to take into account any of the other factors mentioned. In prior cases under section 5 the Commission has not undertaken to so limit the extent of a carrier's operations.<sup>20</sup>

The Antitrust Division contends that possession by banking houses of financial interests in applicant is contrary to the public interest and that, under such circumstances, approval of the unification, if given, should be conditioned upon complete divestment of such interests. Eliminating from consideration the 15,000 shares of preferred stock proposed to be offered the public, agreement covering the sale of which would be subject to the Commission's approval, upon consummation of the transactions, Kuhn, Loeb and Company, through The Transport Company, would own 6,877 shares of applicant's preferred stock and 67,167 shares of its common, or 18.13 and 9.53 percent, respectively, of that outstanding. If the recommendation herein made for increasing the voting power of the preferred stock were adopted, Kuhn, Loeb and Company would hold 11.63 percent of the aggregate voting power. Phoenix Securities Corporation would own 2,067 shares of preferred and 42,617 shares of common, or 5.45 and 6.05 percent, respectively, of that outstanding. On the basis just mentioned, it would possess 5.90 percent of the aggregate voting power.

609 The record establishes that there is no connection between the two companies mentioned. Kuhn, Loeb and Company's stock would be derived primarily from its interest in Arrow. Phoenix Securities Corporation's interest would result from its long-standing ownership of approximately one-third of the stock of Consolidated. Contrary to the argument of protestant, it is clear that Kuhn, Loeb and Company did not sponsor the proposal now under consideration. Agreements were executed with all of the other companies while negotiations respecting the acquisition of Arrow's stock were under way and before any final agreement thereon had been reached. Consummation of each of the contracts is specifically conditioned upon approval by the Commission of acquisition by applicant of control of Barnwell, Consolidated, Horton, McCarthy, and Moran, but Arrow was not included as one of the essential companies.

It is apparent that neither of the banking houses mentioned would be able to control applicant, nor could they do so even if

<sup>20</sup> See *Keeshin Transcon. Freight Lines, Inc.—Control—Seaboard*, 5 M. C. C. 25; *Mid-States Freight Lines, Inc.—Consolidation*, 36 M. C. C. 1; *System Freight Service—Merger*, 36 M. C. C. 601; *Consolidated Freightways, Inc.—Purchase—Volk Brothers*, 37 M. C. C. 95; and *Yellow Cab Transit Co.—Purchase—Ethington*, 37 M. C. C. 20.

they acted in concert. While no one interest would own a majority of applicant's stock, the Horton interests would more nearly approach control than any other. H. D. Horton, with members of his family, would own 14,917 shares of applicant's preferred stock and 267,873 shares of its common, or 39.32 and 38.01 percent respectively, of that outstanding. Ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest. In any event, it is obvious that imposition of a condition such as requested would not accomplish the desired result, as the Commission could not prevent future acquisitions of stock by the same interests, unless control or management in a common interest of two or more motor carriers was thereby effectuated.

In arguing for denial, protestants have frequently compared the instant transactions with those disapproved in the Transport Co. case. Apart from the fact that the carriers here involved were, with 21 others, involved in that case, there is little similarity between such proposed transactions. In the previous case, 610 substantially all of the consideration for the properties was to be paid in cash, to be obtained from the public; here the stockholders of the carriers are to receive no cash. In the Transport Co. case, large promotional and organizational fees were to be paid; here no fees are to be paid to promoters or organizers. It is true that those participating in the organization have been issued certain common stock for which payment was made at par; but even if it be assumed, as contended, that such stock will have a greater value than par, the only effect would be to reduce the value of the remaining common stock issuable under the respective contracts. This is equally true of the 9,000 shares of common stock issued to The Transport Company. The public interest is not concerned with the number of shares into which the parties divide their equity in applicant so long as its capitalization is not excessive. In the prior case, numerous employment agreements at substantial salaries were entered into in contemplation of the proposed unification; here no such employment agreements have been made.<sup>27</sup> No question is presented here as to unreasonable considerations, property appraisals, or capitalization of earnings or intangibles. The fewer number of carriers involved in the instant proposal makes the question of possible restraint of competi-

<sup>27</sup> All employment agreements made by the companies here involved in contemplation of the previously proposed unification have been cancelled with the exception of agreements between Arrow and four of its principal officers and stockholders. Arrow has agreed, if the instant transaction is consummated, to pay one of such persons \$12,000 (which sum was deducted from Arrow's net worth in determining the consideration) for cancellation of the agreement with him. The remaining agreements are with persons who are not directly involved in the instant transaction and who would not secure any of applicant's stock. They are unwilling that their agreements be cancelled, and, in view of the absence of any proprietary interest by them in the enterprise, applicant desires that continued service by them be assured through such employment agreements.

tion less of a factor. The carriers involved in the prior case, but not in the present one, alone would furnish substantial competition to applicant throughout much of the territory involved.

The proposed unification is predominately an end-to-end consolidation of complementary operations, but having sufficient overlapping to make possible eliminations of duplications necessary in order to provide economies and to release for other  
611 business equipment and terminal space presently so vital.

The unified operation would offer the public a more complete service in a large area along the eastern seaboard. It would be of sufficient size to make possible public financing for provision of working capital and additional facilities, if subsequently required, and to command reasonable purchasing power in the acquisition of equipment, insurance and credit. The principal officers of the respective companies would remain with the organization, and local management in the various divisions of the system would be left largely in their hands. Their continued participation and efforts to advance applicant's welfare are assured by their proprietary interest. The fact that these men, practically all of whom have had considerable experience and success in the motor-carrier industry, are willing to transfer control of properties, from which they are deriving good earnings, without receiving any monetary consideration, itself speaks well for the chances of success of the enterprise. Many of them have had experience in unifying motor-carrier operations on a smaller scale and are conversant with the economies and advantages to be derived therefrom.

The benefits which would accrue from a unification of this sort are particularly important at this time because of the increasing demand for transportation facilities, on the one hand, and an impending shortage of equipment, on the other. In the past, the carriers involved have been able to expand their facilities to take care of the growing volume of business through use of earnings. Increasing income taxes will substantially lessen their ability to do this. Sale of stock to the public by these carriers individually for raising addition capital is not feasible, and extensive use of credit for expansion of facilities would place them in such a precarious financial position that their solvency would be jeopardized in the event of a recession in business.

The Commission should find:

1. That acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Bardwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor  
612 Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of their capital stock, and subsequent consolidation into



Associated Transport, Inc., of the operating rights and properties of the carriers named, for ownership, management, and operation, upon the modified terms and conditions above set forth, which terms and conditions as so modified are found to be just and reasonable, will be consistent with the public interest, and that the transactions proposed are within the scope of section 5 (2) (a).

2. That issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 860,411 shares of common stock, for the purposes and upon the modified terms and conditions above set forth, (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

An appropriate order should be entered.

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION, ET AL., ASSOCIATED TRANSPORT, INC.—  
ISSUANCE OF SECURITIES

Balance Sheet Statements of Companies Involved as of April 30, 1941 (a)

ASSETS	Carriers						Non-carriers			Total		
	Arrow Car- rier Corpo- ration	Barnwell Brothers, Incorpo- rated	Consoli- dated Mo- tor Lines, Incorpo- rated (b)	Horton Motor Lines, In- corporated	Mc- Carthy Freight System, Inc. (b)	M. Moran Transporta- tion Lines, Inc. (c)	South- eastern Motor Lines, In- corporated	Transporta- tion, Incor- porated	Barnwell Ware- house & Brokerage Company		Brown Equip- ment & Manu- facturing Company	Southern New England Termi- nals, Inc.
Current Assets												
Cash	\$62,452.69	\$26,554.90	\$216,229.13	\$43,614.33	\$55,164.81	\$79,602.60	\$4,283.78	\$5,644.87	\$323.70	\$5,014.14	\$1,178.56	\$693,228.92
Working funds	3,295.00	7,570.00	11,985.03	47,425.00	765.00	2,540.00	2,335.00	3,913.23		375.00		80,203.26
Special deposits	527.50	580.00	995.00	14,449.56	7,357.00	98.00	745.00	11,113.22		15.70		35,880.98
Temporary cash invest- ments			10,034.35									10,034.35
Notes receivable		807.33	36,421.05	330.00							350.00	37,008.38
Receivables from Associated com- panies									9,164.86	183,916.30	6,077.60	203,899.06
Officers and employ- ees	4,716.51	8,939.85	1,445.07	15,461.45	7,105.21	153,499.68	1,562.08	2,034.59		497.24		195,231.68
Accounts receivable, less reserve for uncollectible accounts	120,709.02	203,528.61	257,139.68	289,732.06	167,661.31	175,757.79	47,031.89	84,487.34	140.00	3,219.25		1,344,660.96
Subscribers to capital stock				4,955.30							284.00	4,955.30
Interest and dividends receivable	14,872.63	62,427.81	124,614.57	113,667.18	81,849.95	32,749.90	8,166.08	30,732.41				1,405.65
Material and supplies		50.30					510.00					575,819.64
Other current assets												500.39
Total	306,573.35	310,156.89	660,289.53	529,434.90	334,043.58	444,247.97	59,633.83	137,915.66	9,628.57	349,775.73	246.01	1,809,563,050.538.57

## APPENDIX A—Continued

	Carriers						Non-carriers				Total		
	Arrow Car- rier Corpora- tion	Barnwell Brothers, In- corporated	Consoli- dated Motor Lines, In- corporated (b)	Horton Motor Lines, In- corporated	Mc- Carthy Freight System, Inc. (b)	M. Moran Transporta- tion Lines, Inc. (c)	South- eastern Motor Lines, In- corporated	Harnwell Transporta- tion, In- corporated	Barnwell Ware- house & Brokers- Company	Brown Equip- ment & Manu- facturing Company		Concor Realty Company	New England Termi- nals, Inc.
<b>ASSETS—continued</b>													
Current Assets													
Tangible Property, Less De- preciation	\$763,722.80	\$34,552.03	\$751,519.52	\$1,401,978.62	\$367,900.75	\$475,440.29	\$46,354.45	\$237,131.01	\$5,563.51	\$38,541.42	\$419,096.08	\$201,293.50	\$5,326,444.16
Intangible Property, Less Amortization	30,747.35	11,956.87	2,611.62	5,009.11		1,000.00	10,528.17	64,705.66		777.66		310.82	127,680.26
Investment Securities and Advances	85,795.46	8,293.29	98,830.64	115,395.32	65,553.11	6,711.25	510.00		40,300.00				335,883.62
Deferred Debits		76,966.74	177,672.14	73,834.13	28,997.19	118,830.58	8,444.01	38,674.39	678.35	2,612.04	6,361.13	1,032.62	619,919.38
Grand Total	1,080,839.05	942,500.82	1,060,903.45	2,125,702.08	827,154.03	1,046,230.10	165,470.46	478,426.74	\$9,970.42	\$301,708.45	\$431,653.19	\$204,462.00	9,400,305.99
<b>LIABILITIES</b>													
Current Liabilities:													
Notes payable:	5,000.00	85,127.56		39,728.42	13,500.00		24,000.00	91,804.46		27,500.00			26,600.44
Payable to: Associated compa- nies		9,164.86		187,307.77						900.00			197,372.63
Officers and employ- ees													
Accounts payable	64,373.28	138,629.50	188.07	125,726.92	9,092.40	17,581.90		12,957.17					45,184.52
Wages payable	30,714.46	13,801.25	279,559.00	44,259.95	124,731.20	442,359.50	23,304.83	213,602.90	.84	63,927.97	456.10		1,406,072.82
C. O. D.'s unremitted	12,479.92		49,018.80	44,289.95	23,454.90	35,403.94		6,771.00		1,047.21			298,444.20
Taxes accrued	23,802.65	18,964.94	144,313.36	197,432.57	11,931.26	1,342.15	752.54						27,510.86
Interest accrued	260.00	1,064.39	832.67	130.00	50,913.49	77,557.21	10,137.51	6,460.54	2,631.19	51,329.91	36,409.66	300.63	620,556.96
Other current liabilities	1,244.99		5,651.71	4,387.86	3,497.79	2,546.34			178.75	72.95	828.00	194.11	7,189.63
Total	139,373.25	272,208.46	481,071.23	599,063.49	237,24.03	577,023.12	58,494.88	331,638.73	2,710.791	34,873.61	97,600.76	508.76	2,871,541.16
Advances Payable					3,149.42	123,901.27		29,277.17			37,700.88	55,000.16	309,103.90

Equipment and Other Long-Term Obligations	56,797.71	144,733.47	390,538.32	172,830.44	300.00	108,682.47	10,500.00	765,000.00	117,033.28	1,146,116.69
Reserve			36,061.61	11,929.31	5,529.90					55,642.77
Capital Stock:										
Preferred stock	138,000.00	32,300.00		58,320.00			22,500.00			246,420.00
Common stock, less re-acquired shares	98,825.00	100,000.00	11,445.00	212,080.00	35,400.00	25,000.00	2,000.00	100,000.00	20,000.00	855,720.00
Premiums and assessments on capital stock			419,486.04	10,000.00						439,486.04
Capital stock subscribed				5,520.00						5,520.00
Total	295,825.00	132,300.00	430,931.04	280,920.00	35,400.00	25,000.00	24,500.00	100,000.00	20,000.00	1,532,178.04
Unappropriated Surplus:										
Unearned surplus	673,841.06	393,318.87	351,602.25	1,233,849.08	304,245.80	56,975.58	31,259.64	150,834.84	31,265.55	41,894.70
Earned surplus			352,601.25	1,233,849.08	304,245.80	56,975.58	31,259.64	150,834.84	31,265.55	11,855,493,408,921.73
Total	673,841.06	393,318.87	352,601.25	1,233,849.08	304,245.80	56,975.58	31,259.64	150,834.84	31,265.55	11,855,493,408,921.73
Grand total	1,066,839.05	942,560.82	1,600,903.45	1,225,702.08	1,046,230.10	165,470.46	69,270.42	391,708.45	631,963.19	204,468,609,460,305.99

NOTES.—(a) Unless otherwise indicated. (b) As of May 17, 1941. (c) As of April 26, 1941. (Dr) Debit balance.

## APPENDIX B

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION ET AL.  
ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

Comparative Statement of Revenue and Net Income of Companies Involved  
For the Years 1932 to 1940, Inclusive, and Four-Month Periods Ending April 30, 1940 and 1941

CARRIERS	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four Months Ending April 30	
										1940	1941
<b>Arrow Carrier Corporation:</b>											
Revenue	\$686,018.93	\$724,836.82	\$783,320.07	\$790,291.81	\$860,110.70	\$979,645.35	\$1,060,116.56	\$1,510,477.46	\$1,468,001.13	\$475,107.87	\$506,043.63
Net Income:											
Before income taxes	38,244.56	61,674.20	77,792.01	53,524.37	6,505.94	D 23,181.92	38,833.28	147,134.77	92,564.17	16,319.40	71,663.21
After income taxes	32,580.76	49,982.47	66,907.45	45,805.06	6,582.79	D 23,181.92	30,595.91	117,134.03	70,660.51	16,319.40	71,663.21
<b>Barnwell Brothers, Incorporated:</b>											
Revenue	346,466.60	485,365.65	563,064.51	755,766.76	1,076,070.32	1,100,453.94	1,385,252.70	1,879,089.51	2,006,670.71	641,454.07	832,836.20
Net Income:											
Before income taxes	3,190.87	19,074.69	1,935.18	43,520.37	54,626.09	D 43,560.91	70,622.07	160,997.59	84,044.75	D 3,728.79	94,133.64
After income taxes	2,473.69	15,087.37	1,535.94	34,346.26	47,053.31	D 43,560.91	54,343.64	123,408.88	67,845.01	D 3,728.79	67,907.83
<b>Consolidated Motor Lines, Incorporated:</b>											
Revenue	1,218,666.57	1,304,231.29	1,677,121.04	1,860,226.69	2,156,136.91	2,778,533.73	3,767,746.32	4,571,455.85	4,562,536.36	1,578,776.52	2,075,870.82
Net Income:											
Before income taxes	4,627.89	D 80,432.17	D 9,894.11	60,237.08	D 30,721.59	D 121,200.34	87,180.15	56,108.48	188,083.00	14,902.27	262,083.20
After income taxes	4,202.91	D 80,432.17	D 9,894.11	52,047.33	D 30,721.59	D 121,200.34	70,568.91	71,971.42	130,331.54	14,902.27	262,083.20
<b>Horton Motor Lines, Incorporated:</b>											
Revenue	253,354.40	497,027.47	657,159.65	880,933.79	1,260,839.65	2,654,719.18	2,813,477.25	3,825,603.40	4,250,083.69	1,300,152.38	1,766,666.52
Net Income:											
Before income taxes	12,519.48	20,465.99	D 1,244.54	74,506.03	164,814.79	148,120.60	334,509.03	508,244.47	308,907.81	70,450.66	266,668.54
After income taxes	8,303.61	13,514.31	D 6,063.42	63,100.43	136,646.63	107,263.36	265,390.05	392,540.95	197,084.45	70,450.66	266,668.54



<b>McCarthy Freight System, Inc.</b>									
Revenue	420,612.76	474,661.71	587,602.23	725,328.43	896,009.55	954,345.65	1,197,622.26	1,082,304.81	1,001,034.04
Before income taxes	6,544.25	D 6,013.66	D 2,356.46	20,624.20	44,734.30	D 39,853.36	20,267.00	81,501.72	132,828.23
After income taxes	4,882.95	D 6,013.66	D 2,636.24	14,817.67	39,857.27	D 39,853.36	17,367.00	68,448.64	88,291.02
<b>M. Moran Transportation Lines, Inc.</b>									
Revenue	517,905.96	693,713.40	824,162.48	241,638.80	1,768,395.23	2,193,951.80	1,946,182.53	2,533,316.43	2,814,859.67
Before income taxes	29,411.50	D 26,765.04	2,949.11	37,220.09	D 1,683.23	D 48,250.77	24,951.17	85,582.85	54,322.95
After income taxes	25,367.42	D 26,765.04	2,543.61	32,102.33	D 1,683.23	D 48,250.77	21,433.96	67,830.01	39,954.21
<b>Southeastern Motor Lines, Incorporated</b>									
Revenue		(b)	(b)	(b)	(b)	619,919.38	550,483.12	1,083,736.80	1,267,691.78
Before income taxes		(b)	(b)	(b)	(b)	D 93,560.03	355.97	D 13,317.60	D 41,583.40
After income taxes		(b)	(b)	(b)	(b)	D 93,560.03	335.60	D 13,601.20	D 41,583.40
<b>Total Carrier Companies:</b>									
Revenue	3,443,025.31	4,299,836.34	5,092,520.26	6,263,226.08	8,018,262.36	11,281,569.03	13,104,131.26	17,396,548.72	18,705,264.41
Before income taxes	94,538.55	D 11,925.99	89,181.19	289,632.14	238,336.39	D 221,486.73	566,171.06	1,086,713.57	855,835.28
After income taxes	77,811.26	D 34,636.72	52,452.53	242,218.47	196,737.18	D 262,343.97	468,105.06	856,243.40	570,188.52
<b>NONCARRIERS</b>									
Revenue								5,867,544.14	7,650,988.81
Before income taxes									817,057.71
After income taxes									669,185.73
<b>Barnwell Warehouse &amp; Brokerage Company</b>									
Revenue									
Before income taxes									
After income taxes									

D Deficit.

<sup>c</sup> Commenced operations March 1, 1938.

\* Commenced operations March 1, 1938.  
\* Five periods ended May 17.  
\* Four periods ended April 1.

Five periods ended May 17.  
Four periods ended April 19.  
Period January 1 to April 25.

Period January 1 to April 25,

## APPENDIX B—Continued.

	1932	1933	1934	1935	1936	1937	1938	1939	1940	Four Months Ending April 30	
										1940	1941
NONCARRIERS—con.											
Brown Equipment & Manufacturing Company:											
Revenue								\$499,402.42	\$556,517.05	\$287,494.94	\$274,310.85
Net Income:											
Before income taxes								91,345.08	159,381.49	55,003.00	45,049.43
After income taxes								65,810.02	112,437.87	39,490.72	31,501.00
Conger Realty Company:											
Revenue								54,120.00	119,203.22	34,000.00	42,200.00
Net Income:											
Before income taxes								41,540.72	87,145.01	25,477.00	34,424.92
After income taxes								31,029.10	61,028.26	18,057.15	23,824.78
Southern New England Terminals, Inc.:											
Revenue								6,466.06	17,190.90	3,699.90	9,133.32
Net Income:											
Before income taxes								D 152.28	3,318.90	3,018.99	7,632.75
After income taxes								D 152.28	2,820.00	3,018.99	7,632.75
Total Noncarrier Companies:											
Revenue								630,543.82	1,037,406.90	362,373.90	330,075.84
Net Income:											
Before income taxes								153,907.21	305,228.02	95,997.07	98,304.90
After income taxes								114,478.17	189,516.11	70,494.74	63,910.99
Total All Companies:											
Revenue								18,047,062.54	19,742,761.36	6,229,918.04	7,987,054.05
Net Income:											
Before income taxes								1,340,520.78	1,121,083.90	196,903.53	203,364.70
After income taxes								970,721.66	758,704.53	173,501.20	783,096.72

Data not of record.

ASSOCIATED TRANSPORT, INC.—CONTROL—ARROW CARRIER CORPORATION ET AL., ASSOCIATED TRANSPORT, INC.—  
ISSUANCE OF SECURITIES

Net Worth as of April 30, 1941,\* and Net Income for Fiscal Year Ended on That Date of Companies Involved and Consideration for Stock Proposed To Be Acquired by Associated Transport, Inc.

	Net Worth		Net Income		Consideration		
	Per Books	Adjusted	Per Books	Adjusted	Stock of Associated Transport, Inc.		
					Preferred	Common	Total
<b>CARRIERS</b>							
Arrow Carrier Corporation	\$910,666.06	\$917,887.92	\$126,004.32	\$148,376.89	\$687,700.00	\$55,989.00	\$743,689.00
Barnwell Brothers, Incorporated	525,018.87	491,459.29	165,727.44	128,318.70	366,000.00	53,039.00	419,039.00
Consolidated Motor Lines, Incorporated	6,783,532.29	742,286.96	306,925.95	263,812.85	587,200.00	114,620.00	701,820.00
Horton-Motor Lines, Incorporated	1,514,769.08	365,342.06	334,837.80	423,536.98	1,178,000.00	178,069.00	1,356,069.00
McCarthy Freight System, Inc.	411,528.99	422,021.83	170,162.16	133,148.90	328,300.00	57,193.00	385,493.00
M. Moran Transportation Lines, Inc.	339,045.80	331,451.91	92,259.05	79,025.93	221,400.00	64,386.00	285,786.00
Southeastern Motor Lines, Incorporated	106,975.58	99,811.32	38,501.42	45,324.75	79,000.00	21,793.00	100,793.00
Transpotation, Incorporated	8,840.37	19,48,263.12	12,789.70	122,051.17	79,000.00	5,335.00	84,335.00
Total Carrier Companies	4,901,977.04	4,462,035.17	1,221,468.54	1,198,990.83	3,447,600.00	550,914.00	3,998,514.00
<b>NON-CARRIERS</b>							
Barnwell Warehouse & Brokerage Company	56,059.64	115,390.38	3,415.59	3,424.03	122,200.00	16,876.00	139,076.00
Brown Equipment & Manufacturing Company	256,534.54	262,745.40	104,525.42	104,692.71	299,000.00	46,094.00	345,094.00
Conner Realty Company	131,265.55	131,318.31	6,868.89	98,217.75	104,700.00	30,968.00	135,668.00
Southern New England Terminals, Inc.	31,525.40	29,434.98	7,440.16	8,613.30	21,400.00	3,771.00	25,171.00
Total Non-Carrier Companies	476,015.43	438,208.07	182,247.06	184,917.79	457,300.00	97,729.00	555,029.00
Total All Companies	5,377,992.47	4,900,243.24	1,403,415.50	1,383,908.62	3,904,900.00	648,643.00	4,553,543.00

\* Unless otherwise indicated. \* As of May 17, 1941.

† As of April 26, 1941.

‡ Period ended May 17, 1941.

§ Period ended April 26, 1941.

† Excludes investment in stock of Barnwell Brothers, Incorporated.

‡ Deficit.

§ Dr Debit balance.

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions of the Antitrust Division, Department of Justice, to  
the proposed report by the examiner and brief in support of  
exceptions*

(Filed Dec. 17, 1941)

## STATEMENT

The unusual nature and importance of this proceeding requires in the view of this Division a brief preliminary statement to the exceptions and brief in support thereof which follow.

In a brief filed herein prior to the Examiner's proposed report this Division stated that competition in the transportation field and not regulated monopoly is the national policy. Congress has enunciated this policy in numerous acts including the Interstate Commerce Act and the antitrust laws. And this policy comprehends competition not alone between different forms of public carriage, but competition between carriers within each form  
621 including common carrier transportation by motor vehicle.

The commission has in many decisions given effect to the legislative will. The Examiner, however, proposes in this proceeding that the Commission by administrative order take the first long step towards regulated monopoly.

The Examiner seeks legal justification for the proposed giant merger of strongly competing common carrier truck lines in the Transportation Act of 1940, which amends and supplements the Interstate Commerce Act. His interpretation of that Act, which will be considered herein, will not only be of interest to the transportation industry, and to the public who pays the transportation bill, but should be particularly illuminating to those who sponsored this legislation in Congress.

No portion of the proposed report, however, is more worthy of rejection than the "chapter" on competition. In a lengthy discourse, the Examiner completely avoids the real issue. That issue, simply stated, is—what motor carrier competition would exist for the giant truck line proposed to be created in this proceeding, the

largest in the United States, with lines extending over 24,338 highway miles from Boston, Massachusetts, to New Orleans, Louisiana? For such an operation the obvious answer on or off this record is, none. The lines to be merged will, if this merger is approved, secure an absolute and unshakable hold on long-haul motor carrier traffic throughout this area. In his anxiety to justify the proposed merger, the Examiner resorts to a mass of irrelevant detail about motor truck operations in the territory of the individual carriers concerned as related to the existing operations of such individual carriers, but, as stated, avoids all mention of motor carrier competition to those lines merged into one gigantic carrier. Some would say that his exposition of competition for local or regional business is but a smoke screen thrown up to becloud and obscure the real issue. This portion of the proposed report, together with the Examiner's characterization of this merger as a "natural development" and "an end-to-end consolidation of complementary operations," and his attempt to minimize the strong competition presently existing between motor carriers parties to this merger, will also receive detailed consideration herein.

One may search the proposed report in vain for any expression of concern for the maintenance of competition in the motor carrier field. On the contrary, the Examiner's views, if adopted, can only tend towards large interterritorial motor truck operations, resulting in a cartelization of the motor carrier industry.

It seems timely therefore to pose the question, to what extent should private corporations be given the exclusive right to use public highways for commercial purposes? As a general premise it can be stated that the public highways belong to all the people, are for the use of all the people, and should be so kept and maintained forever in the public interest. However, their use for commercial purposes by carriers for hire has been repeatedly held by the courts to be a special use which has justified the states in the exercise of their police powers in excluding many such carriers from the highways. We are, however, here concerned not with police powers but with commerce. Shall commerce moving over our public highways by carriers for hire be turned over to a few huge corporations or shall the public which owns the highways enjoy the benefits of competition between such carriers? Stated otherwise, shall there be a "free market" for transportation services or shall there be regulated monopoly? That question is for the first time squarely before the Commission in this case. It can serve no purpose here to contend, as the Examiner impliedly does, that because prior to the Commission's jurisdiction in such matters certain corporations have virtually



usurped public carriage over our public highways in many sections of the country, the Commission should place its stamp of approval on further and even greater usurpation of our public highways. Congress can be relied upon to deal with conditions over which the Commission's jurisdiction does not extend, for it cannot be seriously contended that any of these corporations have a "vested right" to operate for private gain over our public highways. The Commission's concern is, of course, only with those transactions over which it has jurisdiction. In this proceeding that jurisdiction is herein for the first time invoked to concentrate certificated operating rights over 24,338 miles of our public highways in one huge corporation for private gain. That corporation will have such a dominance as will soon result in a monopoly of long-haul motor truck transportation throughout the territory involved.

Thus there is directly before the Commission, the question whether and to what extent it should permit such vast and exclusive use of our public highways for private gain.

624 This preliminary statement would be incomplete without reference to the Examiner's naive consideration of the interest of Kuhn, Loeb & Company, investment bankers, in this transaction and his off-hand disposition of the suggestion that competitive bidding be required for securities to be sold to the public. On the latter point he expresses "grave doubt whether marketing of the securities through competitive bids would be feasible." This view, as will be shown, is directly contrary to the testimony of the president of applicant in response to a query by the Examiner, though that testimony was subsequently slightly modified under the guiding hand of applicant's counsel. On the first point the Examiner fails to deal with realities. He states: "ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest." But, as we shall see, he admits that if this merger is approved the way is clear to make such minority interest a majority interest, and the Commission will be powerless to do anything about it.

The greatest fear of the independent motor carriers today is the railroad invasion of the trucking field. That fear impelled numerous motor carriers to request this Division to intervene in pending applications of railroads for motor-carrier operating rights. The Division has intervened in two such proceedings.

625 That the concern of independent motor carriers is justified seems clear from the Division's experience thus far, for the railroads involved in these cases seek the virtual unrestricted right to operate over-the-road motor truck operations in competition with independent motor lines. In this situation, and

if it is permitted to further develop as these railroads propose, there are few independent motor truck owners today who would not sell their lines at the first reasonable opportunity while there is anything left to sell. For the motor carriers involved in this proposed merger, the setting up of this huge corporation would afford to them their opportunity. The owners of the Arrow Carrier Corporation have already sold out "lock, stock, and barrel" to Kuhn, Loeb & Company, banker for two of the largest railroads which operate in the affected territory. But Kuhn, Loeb & Company cannot under the Interstate Commerce Act purchase control of any other motor carrier without Commission approval. Their first effort to control these carriers was frustrated by Commission denial. However, if the other seven motor carriers should be merged into one company, as herein proposed, Kuhn, Loeb & Company can proceed to acquire all or part of the stock of that company without Commission interference. This eventuality is recognized by the Examiner in the following statement in his report: "It is obvious that imposition of a condition such as requested (divestment of investment banking house interest in or management of motor carriers as recommended by the Antitrust Division) would not accomplish the desired result, as the Commission could not prevent future acquisitions of stock by 626 the same interests, unless control or management in a common interest of two or more motor carriers was thereby effected." Here is the clear admission that upon approval of this transaction the Commission's jurisdiction in this vital matter ceases. There is, however, yet time to act. The Commission can prevent Kuhn, Loeb & Company from acquiring control of the other seven motor carriers by not creating the opportunity to do so through approval of the merger of these eight motor carriers into one company. Such action would stop at the threshold the exploitation of the motor carrier field as the railroads have been exploited.

In an effort to differentiate the old from the new deal, the Examiner writes feelingly about the "continued participation" by the present owners of the seven companies through their "proprietary interest" in the one company, Associated Transport, Inc. He does not accompany these expressions with any suggestion for public assurance of such continued interest. If anything, the contrary is true. A suggestion that these owners freeze their "proprietary interests" for a period of, say, five years to prevent investment banking house control or sale through investment banking houses of such "proprietary interests" in the form of stocks or bonds to the public, would insure to the public the "continued participation" that the Examiner apparently takes for granted.

The emergency should not be used as an excuse for fastening upon the public, whose attention is now focused upon the international scene, unsound policies and practices in transportation, no matter in what guise they may be presented, which result in undue restraint and monopolies. When this crisis is over, we will have struggled in vain if we find that in our own country aspiring groups and individuals have, under the plea of "efficiency," destroyed the opportunity for the "small man" in business to survive and that all fields of endeavor, including the use of our public highways for commercial purposes, have been concentrated in the hands of a few. The proposed merger is not a "natural development" in the motor carrier field nor is its approval necessary to national defense. It is a promotional scheme, unsound in its inception and equally so as revised. And the strangest aspect of this case is the complete absence of railroad opposition—especially in the light of the attempted railroad invasion of the motor carrier field. In this connection it is not inappropriate to direct attention to the railroad bankers who sponsor it.

The basis and purpose of the Division's intervention in this proceeding was set forth in its initial petition to the Commission.<sup>1</sup> In other proceedings the Commission has indicated that it is without authority to require compliance with the antitrust laws. By statute, however, it has the power to relieve parties from the operation of such laws in an appropriate order in this and similar proceedings. It is evident, then, that only through cooperation between these two agencies of government can the public interest be protected and the will of Congress given full force and effect. This is the spirit in which this Division has participated in this proceeding and in which it submits herewith its exceptions to the Examiner's proposed report and brief in support thereof.

#### THE EXCEPTIONS

The Antitrust Division excepts to the findings of fact, conclusions of law, and to the proposed report of the Examiner, served November 28, 1941, in the following particulars, to wit:

1. The Examiner erred in recommending that the Commission should find, contrary to law and the evidence, as follows:

"That acquisition by Associated Transport, Inc., of control of Arrow Carrier Corporation, Barnwell Brothers, Incorporated, Consolidated Motor Lines, Incorporated, Horton Motor Lines, Incorporated, McCarthy Freight System, Inc., M. Moran Transpor-

<sup>1</sup> See Appendix 1 hereto.

tation Lines, Inc., Southeastern Motor Lines, Incorporated, and Transportation, Incorporated, through purchase of their capital stock, and subsequent consolidation into Associated Transport, Inc., of the operating rights and properties of the carriers named, for ownership, management, and operation, upon the modified terms and conditions above set forth, which terms and conditions as so modified are found to be just and reasonable, will be consistent with the public interest, and that the transactions proposed are within the scope of section 5 (2) (a) (sheets 53-54)."

and in failing to recommend that the Commission find, as  
629 required by law and the evidence, that the proposed acquisition and merger will not be consistent with the public interest in that its authorization and consummation would (a) unduly restrain competition in the motor carrier industry and (b) the direct financial interest which investment banking houses would acquire in applicant, one of which, Kuhn, Loeb & Company, is and has for many years been engaged in railroad financing and promotions, will tend toward a restoration of monopoly in transportation and will otherwise be contradictory and hostile to the public interest.

2. The Examiner erred in recommending that the Commission should find, contrary to law and the evidence, as follows:

"1. That, if the proposed transactions were consummated, there would remain adequate motor-carrier competition between the points in the territory involved with respect to which there would be any elimination of competitive service as a result of such transactions.

"2. That, between the principal points involved, substantial competition would be afforded the unified operation by rail carriers.

"3. That the proposed transactions would not result in an undue restraint of competition (sheet 40)."

3. The Examiner erred in recommending that the Commission should find, contrary to law and the evidence, as follows:

630 "1: That the proposed transactions would result in improved transportation service, in that through movements of freight would be simplified and expedited, terminal facilities would be improved, the handling of shipments reduced, relations with shippers and public regulatory bodies would be simplified, and safe operation promoted.

"2. That such transactions would result in more efficient and greater utilization of equipment, and provide a transportation system better fitted to meet the increased demand for transportation service than the carriers involved if operated independently

"3. That such transactions would result in substantial operating economies.

"A. Assumption by applicant of the fixed charges of the carriers involved would not be contrary to the public interest (sheet 15)."

4. The Examiner erred in finding, contrary to law and the evidence, as follows:

"The foregoing clearly shows that if the proposed transactions were approved and consummated, there would be ample competitive motor-carrier service throughout the territory involved. In addition, all of the principal points and many others are served by one or more rail carriers. Competition is also afforded by motor-vehicle contract carriers, and by earloading and forwarding companies (sheet 36)."

5. The Examiner erred in finding, contrary to the evidence, as follows:

The proposed unification would encourage long-haul traffic only to the extent that, through the unification, applicant might be able to offer a better service, or service at lower rates, than the independent carriers can now offer (sheet 50)."

6. The Examiner erred in finding, contrary to the evidence, as follows:

"Many motor carriers presently render single-line service between the Southern, Middle Atlantic, and New England regions, and such service is also rendered through interchange by combinations of motor carriers (sheet 49)."

7. The Examiner erred in recommending that the Commission deny the motion of the Antitrust Division that motor vehicle common carriers of property interchanging freight in the metropolitan area of New York, Baltimore and Philadelphia, including those lines involved in the proposed merger and those left out, be required to furnish the Commission information on the tonnage received from and delivered to connecting carriers in New England and New York State for the last six months of 1940 (sheet 40).

8. The Examiner erred in finding, contrary to the evidence, as follows:

"The fewer number of carriers involved in the instant proposal makes the question of possible restraint of competition makes the carriers involved in the prior case, but not in the present one, alone would furnish substantial competition to applicant throughout much of the territory involved (sheet 52)."

9. The Examiner erred in finding, contrary to the evidence, as follows:



"The proposed unification is predominantly an end-to-end consolidation of complementary operations, but having sufficient overlapping to make possible eliminations of duplications necessary in order to provide economies and to release for other business equipment and terminal space presently so vital. The unified operation would offer the public a more complete service in a large area along the eastern seaboard. (sheet 52-53)."

10. The Examiner erred in finding, contrary to law and the evidence, as follows:

"There are many thousands of motor carriers of property subject to the Commission's jurisdiction. Many of these are very small, and, no doubt, small motor carriers will continue to have their place in the industry. On the other hand, it would seem that large motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the industry. Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the  
633 national transportation policy, as declared in the act, it can not be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need of unifications in the trucking field is more apparent than in the case of railroads, which have already had many years of development (sheet 39)."

11. The Examiner erred in concluding, contrary to law, as follows:

"Section 5 was designed to permit unifications which might result in restraining competition within the meaning of the anti-trust laws, where the disadvantages of such restraint were offset or overcome by other advantages to the public, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry. Thus, determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain, and advantages which would otherwise result from the unification (sheet 24)."

12. The Examiner erred in finding, contrary to the evidence, as follows:

634 "Contrary to the argument of protestant, it is clear that Kuhn, Loeb and Company did not sponsor the proposal now under consideration (sheet 51)."

13. The Examiner erred in finding, contrary to the evidence, as follows:

"Ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest (sheet 51)."

14. The Examiner erred in finding, contrary to the evidence, as follows:

"In the Transport Co. case, large promotional and organizational fees were to be paid; here no fees are to be paid to promoters or organizers (sheet 52)."

15. The Examiner erred in finding, contrary to the evidence, as follows:

"The principal officers of the respective companies would remain with the organization, and local management in the various divisions of the system would be left largely in their hands. Their continued participation and efforts to advance applicant's welfare are assured by their proprietary interest (sheet 53)."

15. The Examiner erred in finding, contrary to the evidence, as follows:

635 "Sale of stock to the public by these carriers individually for raising additional capital is not feasible, and extensive use of credit for expansion of facilities would place them in such a precarious financial position that their solvency would be jeopardized in the event of a recession in business (sheet 53)."

17. The Examiner erred in finding, contrary to the evidence, as follows:

"Considering the type of securities involved, the newness of the enterprise, and the unfamiliarity generally of the public with motor-carrier securities, there is grave doubt whether marketing of the securities through competitive bids would be feasible (sheet 45)."

18. The Examiner erred in recommending that the Commission find, contrary to law and the evidence, as follows:

"That consolidation of such carriers into applicant can best be accomplished if applicant is permitted first to acquire control of them through stock ownership.

"That any authority herein granted for applicant to acquire control of such carriers should be conditioned upon applicant's filing with the Commission prior to the exercise of such authority, a written acceptance of the following condition, viz: Applicant shall consolidate, or cause to be consolidated, pursuant to 636 the authority herein granted, all the operating rights and properties of the carriers involved into itself for ownership, management, and operation within one year from the date that applicant acquires control of any of such carriers (sheet 28)."

19. The Examiner erred in finding, contrary to law and the evidence, as follows:

"Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission had found or said. Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations (sheet 45)."

20. The Examiner erred in recommending that the Commission find, contrary to law and the evidence, as follows:

"1. That acquisition of control of the carriers involved in No. MC-F-1612 and affiliated noncarrier companies would require issuance by applicant of 648,643 shares of its common stock and 39,049 shares of its preferred stock, having an aggregate par value of \$4,553,543.

637 "2. That the aggregate net worth of the corporations of which control would be acquired is approximately \$4,900,000.

"3. That, if the proposed acquisitions of control were consummated, an addition to applicant's capital of \$1,500,000 for working capital and other corporate purposes would place it and the carriers involved upon a sounder financial basis, and is reasonably necessary for that purpose.

"4. That upon consummation of the proposed transactions applicant would have adequate capitalizable assets to support the securities proposed to be issued (sheet 47)."

21. The Examiner erred in recommending that the Commission find, contrary to law and the evidence, as follows:

"That issuance by Associated Transport, Inc., of not exceeding 54,049 shares of preferred stock and 860,411 shares of common stock, for the purposes and upon the modified terms and conditions above set forth, (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose (sheet 54)."

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#### CONCLUSION

For the reasons stated in support of the Exceptions to the findings of fact, conclusions of law, and to the proposed report of

the Examiner, the Antitrust Division recommends that such findings, conclusions, and report be rejected by the Commission and that the applications be denied.

Oral argument is requested.

Respectfully submitted.

(signed) THURMAN ARNOLD,  
*Assistant Attorney General,*

(signed) ARNE C. WIPRUD,

(signed) FRANK COLEMAN,

(signed) S. R. BRITTINGHAM, Jr.,

*Special Assistants to the Attorney General,*

(signed) DAVID G. MACDONALD,

*Special Attorney,*

*Counsel for the Antitrust Division,*

*Department of Justice.*

WASHINGTON, D. C., December 17, 1941.

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#### CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 17th day of December 1941.

(Signed) ARNE C. WIPRUD.

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Before the Interstate Commerce Commission

Docket Nos. MC-F-1612, MC-F-1613

IN RE ASSOCIATED TRANSPORT, INC., CONTROL AND CONSOLIDATION,  
ARROW CARRIER CORPORATION, ET AL.

ASSOCIATED TRANSPORT, INC., ISSUANCE OF SECURITIES

*Exceptions on behalf of the National Industrial Traffic League to  
proposed report of Examiner Vernon V. Baker*

Filed December 18, 1941

Now comes The National Industrial Traffic League and presents the following exceptions to the report proposed by Examiner Vernon V. Baker, Section of Finance, Bureau of Motor Carriers, served November 28, 1941, in these proceedings:

1. The League questions the soundness and sufficiency of the findings recommended on Sheet 47, particularly as to their adequacy to afford a full and mature explanation of all those features of the financial structure which may affect the public, and as to their adequacy to afford support to the second conclusion on sheet 54 that the issuance of securities be approved and authorized.

2. The League urges that the Examiner has not set forth correctly the contention and position of the League (sheet 44); it further raises the question whether the Examiner correctly recognizes the duty and policy of the Commission as regards advertised and future market price of carrier securities having a nominal par value.

3. The Examiner correctly takes the view, in the chapter entitled Issuance of Securities and in the concluding chapter on sheet 50, that questions of rate-making policy are not to be considered in cases under Section 5 but should be reserved for determination when they arise in subsequent rate cases. For that very reason, however, the greatest care should here be exercised to insure that nothing shall be permitted to be done by way of consolidation or the issuance of securities at this time which could possibly prejudice or embarrass the future administration of the Act in rate cases. The Examiner's report is at best unconvincing to the League, which desires only a thorough scrutiny and complete reassurance.

#### ARGUMENT

The purpose for which The National Industrial Traffic League is participating in this proceeding, by the filing of brief and of exceptions to the proposed report, is not the defeat of this application; rather, the entire purpose is the protection of those principles stated in the League's brief, as recognized in the declaration of policy and various other provisions of the

Act. The League's purpose will be accomplished even though the application be granted, if the report and order which the Commission enters herein is so drawn and so conditioned as to insure that there shall be fully and completely reserved for future appropriate proceedings all questions of rates and rate policies which may arise as a result of the contemplated consolidation. This means, however, not merely a verbal recognition such as is accorded by the Examiner, but a real scrutiny and understanding of the implications of the proposed transactions, together with a full disclosure of the underlying purposes of the parties, and effective guarantees to the public.



## THE STATUTE

Section 5 of the statute provides in substance that consolidations or mergers of carriers may be authorized and approved by the Commission, after appropriate proceedings, and upon such terms and conditions as the Commission may find to be just and reasonable; if it concludes that such consolidation "will be consistent with the public interest."

We think that this contemplates the formation of a new operating carrier in which will be merged former separately-owned carriers, only when such entire transaction is in harmony with the national transportation policy and the broad substantive provisions of the Interstate Commerce Act and the Motor Carrier Act.

Under Section 214, as amended, common carriers by motor vehicle are subject, as regards the issuance of securities, to the provisions of paragraphs (2) to (11), inclusive, of Section 20a of Part I. In other words, the law which the Commission has so long and wisely administered as to issuance of securities of railroads applies alike to motor carriers. Specifically, paragraph (2) of Section 20a contemplates that the Commission shall authorize issuance of securities only if it finds that such issue

"(a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose."

We believe the Commission has administered Section 20a as applied to railroads in such way as to guard against over-capitalizations and improper financing, and that the Commission may readily determine whether the financing contemplated in the present application is essentially sound, as the Examiner believes it to be. It should be observed, however, that the security issues here proposed are, by reason of the Commission's jurisdiction, completely exempt from the regulatory powers of the Securities Exchange Commission, and applicant is relieved of the duty to file registration statements with that body. In general, the provisions of and regulations under the Securities Act and Securities Exchange Act are designed to compel a full disclosure and complete information for the protection of the buying public. Specifically, we suggest that this Commission, under the circumstances, should accept no less complete information and should make no less thorough an examination of the transaction than is uniformly required of non-carrier financing.

## THE FACTS AS TO THE FINANCING

The application in Docket MC-F-1612 seeks authority under Section 5 for the newly formed applicant Delaware corporation to acquire control of eight operating motor carriers, which are listed on sheet 2 of the proposed report and which, as shown on page 2 of the opening brief for the League, operate in the aggregate approximately 3,000 vehicles.

The application in Docket MC-F-1613 is described in the proposed report as seeking "authority under section 214 of the act to issue 54,049 shares of preferred and 880,311 shares of common stock, having par value of \$100 and \$1 per share, respectively." This agrees with our description of the application on the first page of the brief for the League, but we there failed to recite and overlooked the fact that part of this common stock was intended to be issued—as the Examiner's report correctly states—"for conversion from time to time of the preferred stock."

This inaccuracy stems from overlooking a feature of the application which is not mentioned even in the brief filed by counsel for applicants. That brief is singularly wanting in any discussion or explanation of the terms and provisions of the financial structure of the new corporation and there is no discussion whatever of the facts upon which must be considered the propriety of the issuance of the securities under the terms of Sections 214 and 20a.

All that needs to be said about this conversion of preferred to common stock is the bald fact that, of the 880,311 shares of common stock contemplated by the amended application, some 200,000 shares are not to be issued until preferred stock is tendered for conversion on the ratio of 4 shares of common for 1 of preferred during an initial 3-year period, and  $3\frac{1}{2}$  shares or 3 shares for 1 in similar subsequent periods. The preferred stock is \$100 par, and the conversion ratio suggests an assumed value for the common of \$25 or more per share. We overlooked in our opening brief this feature of contingent future issuance of 200,000 shares of common; but this is not strange in view of the haziness of the record and of the fact that applicant's counsel failed to mention it in their brief, where they described the application as follows:

"By a second application heard and to be considered simultaneously, authority is sought to issue common stock of one dollar par value and six per cent accumulative preferred stock of one hundred dollars par value, for exchange with the present stockholders for the stock of the aforesaid eight operating companies and for the stock of four noncarrier companies so intimately asso-

ciated with the carriers as to make their acquisition necessary or desirable. Beyond this common and preferred stock issue, authority is sought for issuance of additional shares of preferred stock of the same class, which stock is to be sold to the general public in order to stabilize and improve the credit and general financial position of the merged companies and to provide working funds."

We respectfully suggest that the Commission require counsel for applicants to confirm and accept as correct the figures set forth in the proposed report of the Examiner, if the Commission is to approve the proposed securities as the Examiner recommends.

Considering further, we find that this set-up, described on sheets 41 and 42 of the proposed report, contemplates the issuance of preferred and common stock principally in payment for the stock of the underlying companies with future issuance of 701 additional preferred shares to provide further capital and enlarged facilities, and of additional common to permit of conversion of the preferred stock if desired by the holders.

When the transactions are completed, including the sale of stock for raising working capital, the applicant will apparently have outstanding either some 54,000 shares of preferred and some 640,000 shares of common or, if the preferred is converted, it will have outstanding approximately 860,000 shares of common, par value \$1.00 (Sheet 42).

The League does not urge that there is anything wrong with such a proposal on its face, or necessarily wrong on final analysis. But it must be admitted that such a program reasonably gives rise to many questions and doubts in the mind of an affected third party.

For example, it is not clearly explained why the promoters have chosen this method of financing, using \$100 preferred and \$1 par common, with a conversion ratio of four to one, which seems to assume a value of \$25 per share in the common stock. The League has no information to offer which would be helpful in determining whether such financing is or is not sound and is or is not consistent with the public interest; but the League does suggest these matters should be explained. Taking the foregoing example, the apparent assumption of a \$25 value in the common stock does not square with other estimates by applicant's witnesses, or with the net worth of the carrier properties. What effect can this combination of circumstances, together with the use of nominal par value stock, have to embarrass a possible future rate case wherein the question of the owner's investment might be of great moment?

702 The Delaware corporation laws determine the significance and effect of a stated par value of \$1.00 per share. This is important because of its bearing on the possibilities inherent in exchanging of \$1 par common for \$100 par preferred, on a four-for-one ratio. Under the general body of corporation law there are many questions with regard to common stock of no par value; and under some statutes and decisions \$1 per share stock may be considered as having some of the flexible features of no par stock.

We question whether the specific findings suggested on sheets 47 and 48 are sound and sufficient under Section 20a to support the final conclusion recommended in paragraph 2 on sheet 54 that the proposed issuance of securities should be authorized. Surely those findings are not clear and searching, but are somewhat superficial and place great faith in mute figures.

On sheet 44 of the proposed report, the Examiner states, with some admitted uncertainty, the contention advanced by the League in its opening brief. He concludes that upon analysis the unsoundness of the League's contention is readily apparent. What we desired to say for the League is reflected in three paragraphs on pages 9 and 10 of the brief, as follows:

"We are unable to find in the reported decisions of the Commission with regard to the issuance of securities and the financing of railroads or motor carriers any recognition of the propriety of capitalizing against anticipated future earnings. Such practice would be most unhealthy and it would be no real offsetting argument to urge that only by thus contemplating future increments could the owners of separately operated properties be induced to enter into consolidations.

"If the properties entering into the consolidation here proposed should not prove sufficiently profitable to enable satisfactory dividends on the proposed capital stock, based on the values paid by the holding public, the result inevitably will be  
703 to discourage investments in the securities of other motor carriers, to discourage future consolidations, and thus adversely affect the public interest.

"On the other hand, shippers may fairly insist that in no manner shall the Commission now become committed to deal in the future with the transportation rates of these motor carriers with any degree of regard to the earnings to be realized on their capital stocks, as distinguished from the return on their investments in transportation facilities."

The Examiner does not see in the proposed transaction any basis for fear that in some way in the future the capitalization of the applicant will become inflated, and he says on sheet 45:

"Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission has found or said. Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and, contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations."

The League's position, stated differently, is that there must be no future inflation of the applicant's capital structure for rate making purposes, based on supposed earning power as distinguished from values of physical assets. This in accordance with the requirements of Section 216:

"(h) In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this part any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees of such certificate."

This feature may be disposed of with an assurance by the Commission that in the future consideration of the relation of the rates and earnings of the applicant to its capital structure or value for rate-making purposes, nothing said or granted in the determination of the pending application should prejudice the Commission's actions or views. Accordingly, when counsel for applicants have confirmed the facts as stated above, we further suggest that the Commission require a statement as to what the applicant will conceive to be its capital investment, together with an opinion of applicant's counsel that this investment cannot, under the Delaware law, be affected by future transactions in converting preferred stock into common.

#### TERRITORIAL EXTENT OF THIS CONSOLIDATION.

The second broad feature presented in the opening brief for the League relates to the policy which the Commission should or may adopt under Section 5 as to consolidations of motor carriers.

This, the Examiner discusses on sheets 49-50 of the proposed report. We quote the two separate sentences which open the first and second paragraphs on sheet 49:

"The League refers to the plan adopted by the Commission on December 9, 1929, 159 I. C. C. 522, for the consolidation of rail-



roads, and asserts that the consolidation here proposed does not conform to the pattern specified therein, particularly with respect to size and territorial and geographical extent."

"The League also contends that the advantages inherent in highway transportation have to do largely with short-hauls and, inferentially at least, that approval of the proposed consolidation would foster uneconomical long-haul transportation."

Having raised this point, counsel for the League now agrees that the Examiner is quite correct in saying that in prior cases under Section 5 the Commission has not undertaken to limit the extent of a carrier's operations but has reserved rate questions and has imposed no restrictions of the business which the applicant could handle. Such questions of the benefits and advantages of long-haul vs. short-haul transportation by rail and by motor truck should be treated when they arise in the course of the Commission's exercise of its rate regulatory authority. All the League asks is that the report herein shall not serve as a precedent or impediment to unreserved consideration of the merits of future "rate matters" involving the applicant, assuming that these applications are approved.

706 Oral argument is requested in view of the importance of these proceedings and of the nature of the questions involved.

Respectfully submitted.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

By JOHN S. BURCHMORE, *Attorney*.

L. F. ORR, *Chairman, Highway Transportation Committee.*

R. R. LUDDECKE, *President*.

JOHN B. KEELER, *Chairman, Executive Committee*.

EDWARD F. LACEY, *Executive Secretary*.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

450 Munsey Building, Washington, D. C.

WALTER, BURCHMORE & BELNAP.

2106 Field Building, Chicago, Illinois.

December 17, 1941.

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party of record.

Dated at Washington, D. C., this 17th day of December, 1941.

(Signed) JOHN S. BURCHMORE, *Counsel*.

707 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions of the National Grange to the proposed report by the  
Examiner and brief in support of exceptions*

Filed December 18, 1941

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## STATEMENT

The National Grange intervened in these cases subsequent to the hearing for the purpose of taking evidence. It should not be understood, however, that delay in initial action indicates lack of interest on the part of the Grange in these proceedings. The Grange intervened in these cases because it is convinced that the precedent of monopolistic control of transportation which the consummation of the proposed merger would sanction would adversely affect the interests of agriculture and would be prejudicial to the best interests of the people as a whole.

## EXCEPTION

The Examiner erred in recommending the consummation of the proposed merger and the issuance of securities in connection therewith.

## ARGUMENT

In the opinion of the National Grange, the record in these cases clearly shows that the consummation of the proposed merger would result in not only a monopoly in rail transportation in the east, but because of the participation of the banking house of Kuhn, Loeb and Co., investment and railroad bankers, the proposed merger would result in a practical monopoly of all eastern transportation.

It is believed that such a merger would establish a precedent toward monopolistic control of the facilities of transportation and would result in a request for permission to establish similar

mergers with like results in other parts of the country. The adverse effects to agriculture of a monopoly in transportation in this country are perfectly-obvious.

The Grange was a pioneer in the movement for good roads, and one of the principal reasons for sponsoring the improvement of our highways was the desire on the part of the Grange to free American agriculture from the monopolistic control of transportation enjoyed in the past by the rail carriers.

More than 60 years ago the Grange led the fight against the excesses of the railroads. The so-called "Granger" railroad cases, which originated in Illinois, Iowa, Wisconsin, and Minnesota, were decided by the Supreme Court of the United States in 1876. The decision of the court in these cases established the principle that all who make the public any way dependent upon them for services rendered may be restrained by law from abusing the quasi-monopoly position which they occupy. The successful conclusion of these cases led up to the establishment of the Interstate Commerce Commission and the regulation of the railroads.

However, it was not until the advent of motor transportation and the development of our modern system of highways, together with the improvement of our inland waterways, that the monopoly formerly enjoyed by the railroads was broken and that effective competition in transportation was established.

While it is true that, under the Motor Carriers Act of 1935, Congress provided for Federal regulation of common and contract motor carriers in interstate commerce, it could not be successfully maintained that Congress in passing this act envisaged the creation of a monopoly in the field of motor transportation.

The highways of the country have been constructed at public expense, and the right of the public to use these highways under proper conditions must not be denied nor abridged.

What the Examiner in his proposed report euphoniously calls a "unification" of the carriers involved in these cases means the same thing as the establishment of a vast monopoly in the field of motor transportation. To this we object.

The eight motor carriers which it is proposed to merge in these cases at present operate over 37,884 miles of highway in 19 states, extending along the Atlantic seaboard from the states of New York and Massachusetts in the North to Florida and Louisiana in the South. The consummation of this merger would create the largest common carrier of property by motor vehicle in the United States.

Transportation is the highest single service charge that agriculture has to pay. We believe that the merger of the eight

carriers involved in these cases could not fail to result in higher transportation rates. In our opinion, the proposed merger would be contrary to the will of Congress and detrimental to the interests of agriculture and to all the people.

## CONCLUSION

For the reasons stated, the National Grange recommends that the findings, conclusions, and report of the Examiner be rejected and that the applications be denied.

Oral argument is requested.

Respectfully submitted.

THE NATIONAL GRANGE,

1343 H-Street NW., Washington, D. C.

FRED BRECKMAN,

*Washington Representative.*

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## CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 18th day of December 1941.

FRED BRECKMAN,

Fred Breckman,

*Washington Representative,*

*The National Grange.*

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Before the Interstate Commerce Commission

Docket MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket MC-F-1613.

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions on behalf of the Secretary of Agriculture to Report  
Proposed by Examiner Vernon V. Baker*

Filed December 18, 1941

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## STATEMENT

The Secretary of Agriculture did not intervene in these proceedings until after the hearing for the purpose of taking evidence was completed. Delay in initial action, however, does not

signify lack of interest on the part of the Secretary in the ultimate result to these cases. The Secretary intervened as soon as he was apprised of the implications, actual and potential, of applicant's proposed action. He is convinced that the consummation of applicant's proposal would have effects seriously adverse to the interest of American agriculture.

The proposed report of the examiner in these cases, it is submitted, is, in many particulars, contrary to the evidence and the applicable law. Moreover, the ultimate result reached in the examiner's report is, in the opinion of the Secretary, derogatory of all sound principles of transportation regulation. With respect to particular defects in the examiner's proposed report, the Secretary wishes to concur in the exceptions and argument in support

thereof of the Antitrust Division of the Department of Justice filed with the Commission on December 17, 1941. In

714 order to avoid repetitious argument, the Secretary respectfully requests that the Commission consider the Secretary as supporting and endorsing these detailed exceptions and arguments. With respect to the fundamental result proposed by the examiner, the Secretary likewise wishes to concur in the position taken by the Antitrust Division and with the argument in support of that position. As a matter of emphasis, however, certain circumstances concerning the proposed recommendation of the examiner which bear particularly upon agricultural interests will be briefly developed.

#### EXCEPTION

The examiner erred in recommending the consummation of applicant's proposed merger.

#### ARGUMENT IN SUPPORT OF EXCEPTION

Two propositions will be advanced. First, it is submitted that the consummation of the proposed merger will result in a practical monopoly in motor transportation throughout the area involved. Secondly, there exists a strong probability that the consummation of the proposed merger will result in a cartelization of rail and motor transportation in the affected area. These

715 two propositions, it is submitted, are amply supported by the record. In this connection, reference is made to the original brief and to the exceptions of the Antitrust Division. The first proposition is so nearly self evident from an examination of the record and has been so ably demonstrated by the brief and exceptions, referred to above, that further argument would seem unnecessary. With respect to the second proposition, i. e., that the consummation of the proposed merger will probably result in



the cartelization of eastern rail and motor transportation, a brief amplification of the existing discussion on this point may be helpful.

The examiner refers in his proposed report to the small percentage of ownership which Kuhn, Loeb & Company has in the assets of the contemplated merger. In the exceptions of the Anti-trust Division, it is pointed out that following the consummation of the proposed merger there will be nothing to prevent this company from securing a preponderance of these assets. Regardless, however, of whether Kuhn, Loeb & Company ever secures ownership of a majority of the assets of the proposed merger, it is an exceedingly superficial viewpoint which would deny the probability that this company will have effective control over its operations.

716 . In the now classic study by Berle and Means, the Modern Corporation and Private Property, the divorcement of ownership and control in modern business organizations is conclusively demonstrated. Control no longer depends upon ownership of capital assets. The all-important elements underlying control of most large concerns are the intangible factors of organization, managerial competence, financial interrelationships in the general business structure, and those amorphous but vitally important factors growing out of strategic personal and business interrelationships. The existence of these factors are economic realities which cannot be ignored in any intelligent appraisal of actualities, and, it is submitted, it does not require great acuteness to discover wherein, among the component parts of the proposed merger, the preponderance of these factors lie. The very fact that there was no railroad opposition to the proposed merger lends support to the belief that, either through later acquisition of capital assets or through some one of the many mechanisms of minority control, the railroad banking house of Kuhn Loeb & Company will control the operations of the proposed merger. To deny that such control would destroy competition in eastern transportation is to forget the plainest lessons of transportation history and to ignore the realities of financial methods.

717 The interest of American agriculture in preventing monopolistic conditions in transportation are obvious. The Interstate Commerce Commission owes its existence, in large measure, to the agrarian revolt of the early seventies against intolerable abuses growing out of railroad monopoly. Through the functioning of the Commission, monopolistic practices were controlled, but it was only with the development of inland waterways and, more particularly, the modern highway systems that the railroad monopoly was broken. The development of free highways and the con-

comitant growth of the motor industry gave American agriculture the advantage of competing transportation facilities.

It is realized that the Congress has by affirmative legislative action modified pre-existing competition between transportation facilities. In the interests of stability, the Congress has given the Commission control over rates and business privilege rights of motor carriers. It must be emphasized, however, that the Congress has never sanctioned the concept of regulated monopoly in transportation. The philosophy underlying its enactments in this field has never gone beyond the point of advocating a condition of regulated competition. The Secretary earnestly submits that in the event the Commission approves applicant's proposed merger it will, by administrative action, be permitting the realization in fact of a monopoly condition in transportation beyond that authorized by the Congress.

#### CONCLUSION

For the reasons stated above and for those contained in the Exceptions of the Antitrust Division, the Secretary recommends that the findings, conclusions, and report of the Examiner be rejected and that the applications be denied.

Oral argument is requested.

Respectfully submitted.

By direction of the Secretary, December 18, 1941.

(Signed) **MASTIN G. WHITE**, *Solicitor,*  
*United States Department of Agriculture,*  
*Washington, D. C.*

**HASKELL DONOHO**,  
*Of Counsel.*

**CHARLES B. BOWLING**,  
*Chief, Transportation Division,*  
*Surplus Marketing Administration.*

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#### CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 18th day of December, 1941.

(Signed) **HASKELL DONOHO**,  
*Haskell Donoho, Senior Attorney,*  
*United States Department of Agriculture,*  
*Washington, D. C.*

## MC-F-1612

IN THE MATTER OF ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—ARROW CARRIER CORPORATION, ET AL.

## MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Exceptions and brief in support thereof*

Filed December 18, 1941

Comes now Andrew B. Crichton, et al., doing business as Super Service Motor Freight Co., protestant herein, by its attorneys, Roberts & McInnis, and respectfully presents the following exceptions to the proposed report by Examiner Vernon V. Baker, served November 28, 1941:

## I

Protestant excepts to the failure of the Examiner to find that the consideration for the acquisition by Associated Transport, Inc. of control of Southeastern Motor Lines, Inc., is excessive and not in the public interest for the reason, among others, that the restrictions upon the rights of said Southeastern Motor  
723 Lines, Inc., referred to although not specified by the Examiner at Sheet 33, and the nature of the rights to be acquired under the application from Barnwell Brothers, Inc. and Horton Motor Lines, Inc., are such as to make the acquisition of control of Southeastern Motor Lines, Inc. unnecessary in the accomplishment of the alleged purposes of the application and of no value.

## II

Protestant further excepts to the Examiner's assumption without discussion or rationalization that all the rights claimed by said Southeastern Motor Lines, Inc. exist in law and in fact as claimed. Specifically, the protestant excepts to the Examiner's error in not requiring the elimination of Southeastern from the proposed control and consolidation because of its failure to possess title to rights claimed between Nashville and Knoxville, Tennessee, and now operated unlawfully by said carrier.

## III

Protestant further excepts to the Examiner's failure to find as a matter of law that Southeastern Motor Lines, Inc., has no

rights to convey under its compliance order of November 29, 1938, for the reason that said order is based upon an irregular operation by Southeastern's predecessor which was unlawfully converted into a regular route operation contrary to the doctrine of the Maher case, 307 U. S. 148.

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## IV

Protestant excepts to the approval of the acquisition of control of Southeastern Motor Lines, Inc., by Associated Transport, Inc., through purchase of its capital stock, for the reason that such acquisition of joint control of competitive carriers without immediate consolidation provides opportunities for, and induces discrimination in service, rates, and interchange provision between the several carriers so controlled, and has been consistently condemned in finance reports of the Commission.

## V

Protestant excepts to the indefinite proposal of subsequent consolidation by Southeastern Motor Lines, Inc., and its operating rights and properties into and with Associated Transport, Inc., because no proposal for such consolidation, nor of the terms and conditions thereof, nor of the operations to be conducted, nor the expenses to be incurred by such consolidation, are before the Commission, and for the further reason that the present operation of Southeastern between Roanoke, Virginia, and New York City is, in fact, the regularly routed successor of an irregularly routed "grandfather" claim not yet finally adjudicated, and that it could not be consolidated with the regular operations which would be merged into Associated Transport.

725 Protestant further asserts that the Jacobs' rights under which Southeastern proposes to operate between Nashville and Knoxville, Tennessee, in interstate commerce are nonexistent in that the said Jacobs' operations, illegally commenced subsequent to "grandfather" date and abandoned for a protracted period of more than one year prior to commencement of operation, claimed only service between Nashville, Tennessee, and New York City without service of intermediate points, and there exist no rights to operate between Nashville and Knoxville in interchange as an extension of entirely dissimilar rights otherwise acquired.

Protestant further excepts to the proposal to transfer, as a consideration for the purchase price of the controlling interest in the stock, applications to conduct common carrier service on proof of convenience and necessity adversely determined in the Examiner's

report issued March 12, 1940, and finally submitted on reply to exceptions on May 1, 1940, and as yet undecided.

## VI

Protestant further excepts to the proposed report insofar as it affects the acquisition of the control of Southeastern for the reason that it is not in the public interest in that it is a proposed elimination of competition without being in any sense complementary to the consolidated operation of Associated Transport, Inc.

The protestant asserts as a matter of law that there is no present right in Southeastern to operate or to continue operations west of Knoxville, Tennessee, and that there are no rights in Southeastern north of Roanoke, Virginia, which are susceptible of merger or consolidation, and that the proposed acquisition of control is not consistent with the public interest, nor capable of fruition of merger consistent with the public interest and, hence, that it must be disapproved.

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### CONCLUSION

This protestant has zealously avoided discussion of the merits of the proposed report, other than as it affects inclusion of Southeastern in the merger. It is its position that the general problems involved in this proceeding are before the Commission at the instance of other and, we submit, competent authority. The approval of the inclusion of Southeastern in the proposal for common control and eventual merger is one of critical importance to Super Service. It may be noted that Super Service was included as the basic carrier having certificated rights in an earlier proposal involving certain of the same interests, which was disapproved by the entire Commission. Now it is proposed to reach the territory which Super Service has adequately and efficiently served by the use of alleged rights which are so defective on their fact as to necessitate a conclusion that the combination assumes that its sheer size will prove convenience and necessity of operation anywhere, once competitive carriers have been pacified. Insofar as the inclusion of Southeastern is concerned, the proposed report should be reversed.

Respectfully submitted,

ROBERTS & McINNIS,

(Signed) By WILLIAM A. ROBERTS,  
WARREN WOODS,

*Counsel for Super Service Motor  
Freight Company, Inc., Protestant.*

DECEMBER 18, 1941.



## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the parties of record with a copy of the foregoing Exceptions and Brief in Support of Exceptions, by mailing a copy thereof, with postage fully prepaid.

(Signed) WILLIAM A. ROBERTS.

DECEMBER 18, 1941, Washington, D. C.

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Before the Interstate Commerce Commission

Nos. MC-F-1612 and MC-F-1613

Application of ASSOCIATED TRANSPORT, INC.

For the Acquisition by Exchange of Stock of Control of Certain Motor Carriers, For the Merger Thereof, and to Issue Stock.

*Reply to exceptions.*

Filed Dec. 27, 1941

At long last an opportunity is presented to the applicant herein to answer the untrue and insidious insinuations, innuendoes, and charges persistently and constantly made during the progress of the hearings and in the briefs by the Anti-Trust Division in attempting to smear this application by reference to investment bankers, railroads, and various persons connected or associated with the late unlamented Transport application. During the progress of the hearings it was the duty of counsel for the applicant (as it should have been the duty of the Anti-Trust Division, particularly in view of the Commission's order governing their intervention) to refrain from unduly broadening the issues and to refrain from flights of fancy and speculations wholly without basis in fact. The Examiner correctly ruled that those matters to which we immediately address ourselves were not relevant to the issue and he properly dismissed the Division's contentions as being without merit. However, since the Division has chosen to devote a considerable portion of its briefs to a reiteration of untrue and inflammatory suggestions, apparently calculated to inflame and incite public sentiment against the application, we feel constrained to make reply regard-

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less of the fact that there are to be found in their exceptions no arguments not contained in their previous brief to the Examiner.<sup>1</sup>

In attempting to write a brief to the Examiner, applicant, because of sonorous protestations in the Division's petition for intervention and their various self-serving declarations made during the course of the hearing, had no reason positively to believe that it would be subject to attacks of a muck-raking or scurrilous nature or that the first brief of the Division, in the light of all the evidence in the case, would not take the form of substantial

751 recognition of the necessity and desirability in the interests of the public, of the consummation of this proposed merger.

We now recognize that the Anti-Trust Division having decided, for whatever reasons of its own, to usurp the regulation of transportation facilities, and having elected this case as a beach-head for its infiltration into the regulatory processes, then, regardless of the evidence or the merits of the application, it was bound, for reasons of tactics and expediency, to assume and contend by every means in its command that the application was monopolistic and inimical to the public interest.

We here state that our comment and criticism of the attitude of the Division is not intended as a personal reflection on any of its personnel, for whom individually we have the highest regard, but is directed rather at a group attitude or philosophy which has been well characterized by Max Lerner as the "corrosive detachment" school of economics. Whatever the justification for such philosophy and tactics on the part of governmental agencies in attempting to police and restrain unfettered and rampant free enterprise, we submit it has no place for its application in an industry now well regulated and properly dominated by the extensive and adequate provisions of the Interstate Commerce Acts and an experienced, competent, and honorable Commission.

The shippers, the farmers, the general public, and the trucking industry would indeed face a bleak transportation future were

<sup>1</sup> The exceptions to the proposed report of the Examiner filed by the National Grange and by the Secretary of Agriculture indicate that they support and rely upon the arguments, briefs and exceptions of the Anti-Trust Division of the Department of Justice. Applicant desires therefore that this reply shall be considered as an answer to the contentions of these two exceptions as well. (Examination of Section 201 of the Agricultural Adjustment Act of 1938 would seem to indicate that the Secretary of Agriculture, by his intervention in a Section 5 proceeding, may well have exceeded the quota of powers and duties allocated to his Department by this legislation.)

With respect to the query in the exceptions of the National Industrial Traffic League as to the reasons for the par values selected for the stock, we respectfully invite attention to pages 17 and 18 of our brief to the Examiner. The conversion price was arbitrarily arrived at and the applicant has no immutable position with respect thereto.

The exceptions of Andrew B. Crichton, et al., doing business as Super Service Motor Freight Co., dealing entirely as they do with the validity of the Knoxville and certain other operating rights of the Southeastern Motor Lines, Inc., and being wholly irrelevant in a Section 5 application, take on more the aspect of a stray pot shot in a continuance of the Tennessee mountain feud inherited by these two truck lines from their "grandfathers" of the bellum days ante June 1, 1935. They seem not to require a reply.

there to be general acceptance of a way of thought which conceives regulation solely from a policeman's or a prosecutor's perspective. Was it the theory of Congress in providing for motor truck legislation that this great young and growing industry should be frozen at its then stage of development, or rather was it intended that safe, adequate, economical, and efficient service and sound economic conditions among the carriers should be provided to the end of promoting and preserving a national transportation system adequate to meet the needs of commerce and of the national defense. Was not the Interstate Commerce Commission entrusted with the all important task of guiding the future and natural growth of the industry through leadership, direction, and the lighting of beacons along the way, towards the fulfillment of the national transportation policy, or was it intended that it should be committed solely to the task of forbidding all progress lest through some future laxity in its administrative processes any of a million imaginable fanciful improbabilities might lead to an undesirable situation?

The present application is before the Commission for the many cogent and imperative reasons set forth at length in the testimony and in the applicant's brief as submitted to the Examiner and which need not be repeated here. The Commission's decree in the Transport case was, and is still, believed by the operators here involved to have been intended as constructive regulation. These cautious but forward-looking operators understood that in that decision, the Commission, in its experience and wisdom, had indicated the road leading to improvement and security for them and their companies within the industry and which road they had theretofore been unable to see or understand. They understood from the decision that through cooperative effort, by a compliance with the Commission's requirements as set forth therein, there was open for them a path which would lead neither to bankruptcy and frustration nor to divorcement from their properties and from the industry they helped to build and of which they desired to remain a part.

They are deeply concerned and more than a little resentful that their sincere and honest efforts to improve and safeguard the future of their businesses and the industry and to comply with what seemed to be the Commission's clear and unmistakable blazing of the trail has resulted in bringing down upon their heads a storm of vilification and abuse unprecedented in their business experience. They are lead to wonder at the ways of their stern regulating parent which directs them to a road which can only be traversed with great travail and expense and then seems to invite and almost encourage the pack to attack them along the way.

and they are fearful lest as in the Russian story some of them may be sacrificed to the wolves.

It may well be that this Commission will feel we are unduly excised over what the Anti-Trust Division no doubt regards as just good clean fun. On the other hand, over a period of about five years the operators, through real effort on their part, have come to have a very workable understanding of the principles and implications of regulation, its desirable as well as undesirable aspects, and appreciate more and more the limitations surrounding their freedom of action in their efforts to make progress in the face of inroads of other transportation agencies. In

754 their own field of motor truck transportation, it has, for some time, been apparent to these operators that eternal vigilance and ceaseless effort is the price for holding their own against growing competition. The larger lines are caught between three fires:

"(1) They are the direct targets for air, water, rail, and express companies.

"(2) Because they are among the comparatively large lines in an industry of small units, the demands placed upon them by the shipping public with respect to quantity and quality of service grown constantly more meticulous and extreme, requiring ever more and more effort to satisfy customers and give service in their established territory.

"(3) In the face of these demands, which they are not financially and physically able to meet, they are sniped at, raided, and invaded by smaller lines with less overhead which in the past, having more territory than they could adequately serve, have now, through increased profits, brought about by specialized movements and increased tonnage, multiplied their competitive efforts for more business. Many lines, formerly very small, have grown substantially through mergers or acquisitions so that they are becoming new factors in many territories and, through their greater flexibility resulting from smaller size, skim the cream of the business. Certain large lines, having rights of wide scope and high earnings because of peculiarities of operation or territory in at least parts of their system, are becoming more important within the eastern seaboard."

The many quirks and problems of the trucking business are very real to the operators but apparently nebulous indeed to the

755 Division's representatives, economists, and theorists apparently conversant only with great unregulated industrial enterprises. Indeed only on this latter theory can we credit the Division with the sincerity and the high public-mindedness which they have repeatedly professed during these proceed-

ings. Under smooth-sailing business conditions covering a long period of years, it is conceivable that by the processes of natural growth, the plowing back of earnings, the integration of partially cultivated intermediate territory, and the step by step of minor acquisitions, there could be brought about an integrated system of transportation adequate to meet the needs of the territory involved in this application. Yet, as a practical matter, even under such Utopian conditions, this result is more than questionable, since the inevitable would be countergrowth and counterattack by groups of lines whose territory was invaded and there would follow economic wars and competition of a bitter and destructive nature which could not serve the public interest, and which would be the continuation of just the sort of destructive competition Congress sought to obviate by the passage of the Motor Carrier Act. Such idle and wishful thinking is, however, to forget the present emergency, the disruption of ordinary channels of industry, the urgent necessity for immediate movements of defense materials, and rising prices, all of which threaten the very existence of the larger carriers who must sustain the greatest of these blows and burdens, as well as to forget the tax situation which economically for many years to come closes the door to "boot-strap" expansion of these overexpanded large lines.

766 . The shipping public and the Commission are, or should be interested, not just in the trucking service between long or medium long haul points, but in a network of integrated service between all communities in a large territory, which of necessity must include in proper proportion short, medium, and long haul operations. Such a service is essential to the public needs. Towns, villages, and hamlets and even small cities in nonpopulous territory cannot support an adequate administrative organization and the necessary extra equipment and facilities to take care of fluctuations in traffic and regular service at anything like prevailing rates. With the growth of the power and demands of the unions, cost advantages which the truck lines had in the past on fifty to two hundred mile hauls, as opposed to the railroads, have largely disappeared. Common carriage by motor vehicles, as now operated in much of the territory, involves pick-up of freight on L. T. L. shipments at the shipper's dock by a local truck, the transfer of this freight at the truckman's dock to a road unit, transportation over the road to the terminal of the delivery city, transfer of this freight to a delivery truck, and finally transportation by the delivery truck to the consignee's dock. Operating conditions may even require one or more handlings at different intermediate docks between the city of origin and the city of destination. The movement must be handled ex-



actly as such a movement by rail with its concurrent pick-up and delivery by truck, and the union rules in much of the territory are such that road trucks and road drivers are not permitted to make pick-ups and deliveries of L. T. L. merchandise, 757 or when this is allowed a penalty of one or more dollars per stop is provided in the union contracts and then the number of stops limited to not more than three or four. Regardless of the fact that longer hauls give a diminishing rate of return per mile because of the rail set-up, nevertheless hauls of three to five or more hundred miles are necessary to break even on L. T. L. shipments, if sufficient revenue is to be obtained to offset the pick-up and delivery and dock handling cost. These are all factors which the Commission must know from its examination, analysis, and comparison of the various types of trucking operations involved not only in this merger but from the reports of other lines on file with the Commission. Testimony along these lines was adduced in this proceeding. The situation is apparently incomprehensible to the Division who, in spite of their claim of intervention only to be of assistance in developing the facts, chose to attempt to block all efforts to detail these facts on the hearing.

Except through the granting of this application, produced, as we have before suggested, in accordance with what seemed to be the clear design set forth in the Commission's decision in the Transport case, it is difficult to see from what source the public can hope to achieve an adequate transportation system.

The avowed purpose of the intervention of the Anti-Trust Division in this proceeding, as set forth in their letter under date of August 15th, 1941, addressed to Chairman Eastman, of the Commission, is as follows: "The reason for my request is that jurisdiction to determine whether unification of carriers 758 unduly restrains competition has been given to the Interstate Commerce Commission. The Anti-Trust Division is the only government agency in a position to present evidence on the monopoly question from a point of view of the public interest. Evidence presented by private parties necessarily must be colored by their own property interests in the controversy. Therefore, we feel that it is part of our duty to complete the record before the Commission with such evidence as we have discovered in our investigation of transportation monopolies." Presumably the Commission accepted this communication at its face value and, in good faith, thereafter issued an order permitting the intervention of the Division. Certainly, except for the fact that this communication came at the eleventh hour and included therein a request for an unreasonable delay, there was nothing about it which might have indicated it was the intention of the Division to do

other than what they claimed to be their duty, namely, to spread upon the record certain facts pertinent to this case which their alleged "investigation of transportation monopolies" had disclosed. Probably the Commission, as did the applicant, looked forward with interest to the disclosure of the facts to which they referred. It was only as the hearing progressed that there became apparent the Division's intention to obstruct the expedition of the proceedings by every means at its command from repeated requests for adjournments to objections to testimony; that contrary to their avowed purpose they were not interested in the facts being fully presented to the Commission, and that in effect they had sought and obtained permission to intervene  
759 by misrepresenting their intentions to the Commission, for at no time during the hearing did they call any witness or

endeavor in any manner to produce testimony respecting any investigation which they had made in the past of alleged transportation monopolies.

They did produce two witnesses on the subject of this application, concerning whose testimony the Examiner, in his report, was undoubtedly too charitable to comment. We also refrain from a further discussion of these witnesses other than to invite the Commission's attention to their testimony and to the footnote on page 29 of our brief to the Examiner.

A reading of the record in the case renders it apparent that it was never the Division's intention to develop the facts of the case through their cross-examination of witnesses, but on the contrary to seek to develop, by confusing and immaterial questions, a few words or statements here and there throughout the record as a basis for supporting the unreal and scandalous arguments set forth in their brief to the Examiners and in their exceptions to his report. This is borne out by the nature of the arguments made in support of the exceptions. They commence by what can only be a calculated distortion of that part of Examiner Baker's report which deals with the legislative intent in the passage of the Transportation Act of 1940. The Examiner stated, "There are many thousands of motor carriers of property subject to the Commission's jurisdiction. Many of these are very small, and no

doubt small motor carriers will continue to have their place  
760 in the industry. On the other hand, it would seem that large motor-carrier systems, comparable in size and strength with units of competing forms of transportation, should also have their place in the transportation industry. Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the national transportation policy, as declared in the Act, it cannot be supposed Congress intended that

the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need for unification in the trucking field is more apparent than in the case of railroads which have already had many years of development." The Division, although pretending to set forth a part of this language and enclosing it in quotation marks, tampers with the record by deleting the words "units of" from in front of "competing forms of transportation" and on the basis of that part of his report as doctored, they sarcastically suggest that the Examiner proposes, "That the Commission should encourage, approve, and establish motor-carrier system in size and strength of our great railroad systems!" When we recall that this is the action of one government agency commenting on a judicial officer of another government agency, to quote from their own brief, "It may not be inappropriate to inquire—where does the public who pays the bill 'get off' in such a concept of public responsibility?"

761 We confess our inability to follow the trend of their argument on page 39 which seems to be that the Examiner and the applicants have somehow conspired to promote a "regulated monopoly" (or perhaps an unregulated one), and to turn over to this monopoly the public highways of the country. They attempt to prove this on their theory that railroads have the ability to perform mass transportation and trucks do not. (We suppose this is another way of saying they should have a natural monopoly of such movements.) Railroads, they say, own their right-of-way and thus have a monopoly thereon (and they defend the railroads' right to be entitled to a fair return on their investment in creating such a monopoly). A motor carrier for hire, on the other hand, they continue, operates on the public highways and (contrary to the findings of Mr. Commissioner Eastman, who was empowered to investigate such matters), apparently pays nothing for the use of the public highways and arbitrarily and regardless of the interest of the shipping public should be confined to such territory and such amount of business or of financial stability as under no circumstances may be deemed to imperil the "fair return" of a railroad on its monopoly of its private right-of-way (which so often was secured by the abuse of governmental power of eminent domain and through government land grants or otherwise from the pockets of the citizens, and in which position the railroads are intrenched through the certification processes of governmental regulation). To reiterate, the essence of their argument would seem to be that "regulated

762 monopoly" has not yet been accepted in the field of national transportation but they attempt to prove this by justifying regulated monopoly for railroads as being the national policy. Then, in spite of the fact that the Examiner has emphatically found no monopoly of any sort would result from the granting of this application, they accuse him of attempting to force "his concepts of regulation of the railroad industry upon the motor carrier industry." We do not understand that kind of double talk, and, if we may borrow again from their brief, "surely a broader understanding of the problem than here shown is necessary if the public interest in the motor carrier industry is to be safeguarded."

On pages 40-41 they continue with another series of reductio ad absurdum arguments. By isolating a phrase from the Examiner's discussion of competition, and paraphrasing portions of the proposed report dealing with this subject, they would have it believed that the Examiner had found the proposed unification would result in a monopoly contrary to law and that approval by the Commission would be to place its blessing on such a result. The Examiner made no such findings and no such recommendation, as is readily disclosed by a perusal of sheets 24 and 47 of the proposed report. What the Examiner did state was that substantial competition presently exists between certain of the carriers involved and that it would be eliminated upon the consummation of the transaction. He then stated, "However such

fact alone is not controlling," and proceeded to give not 763 one but several reasons therefor, including the fact that Section 5 of the Act was designed to permit unifications which might result in restraining competition within the meaning of the Anti-Trust Laws where the disadvantages of such restraint were offset or overcome by other advantages to the public, and including the statement that the question of whether unification would be consistent with the public interest was to be weighed not only in the light of potential elimination of competition but weighed as well in the light of remaining competition. His devotion of the next sixteen pages of the report to a thorough and exhaustive study of remaining competition, and his recommendation to the effect that there would remain adequate motor carrier competition as well as rail competition, and that the proposed transaction would not result in an undue restraint of competition, indicates that invoking of the support of Section 5, Sub. 11, was not required. This is a far cry from any theory that the public interest with respect to the competitive aspects of the case was disregarded, bludgeoned into insensibility with a club from Section 5, or the advocacy of a doctrine of "regulated monopoly."

The applicant trusts that the Commission will not permit the Division by its transparent red-herring device of an all-out attack on investment bankers, permit the genuine public interest in the consummation of this transaction to be lost in the battle-clouds of this diverting flank attack.

Under oath the truckmen involved in this application, 764 whose names and reputations are well known to this Commission and whose integrity and honesty have never before been questioned, have sworn that this merger is not a scheme or device to carry out or accomplish by another method any purpose of Kuhn Loeb, the railroads, or any other concealed or disguised interest. This is a genuine cooperative effort on the part of the truckmen owners of seven of the eight carriers, and any similarity or relationship to the Transport deal arises solely from the fact that the genesis of the plan is to be found in what was read as the plain dictum of the Commission in its lengthy decision dealing with that case. The eighth carrier, Arrow, which, as of the time of its contract with Associated Transport, was not controlled by truckmen operators but rather by Kuhn Loeb, was included in the transaction solely because it was regarded as a useful although not wholly necessary part of a unified operation serving the involved territory. Since the operators in organizing this deal dealt forthrightly with the merits and requirements of an adequate public transportation system, they did not perceive that because investment bankers had an option on Arrow they might be called upon to defend this company and themselves from vicious and unwarranted attacks. Had this occurred to them at all, they would have dismissed such a thought as ridiculous because of their confidence in the Commission. The investment bankers were not acquiring the Associated Transport Company. Associated was acquiring a trucking property from investment bankers, and the resulting percentage of stock which such bankers would receive was less than ten percent. Phoenix Securities had owned a

765 large percentage of Consolidated Lines for years without interference with its operations or any railroad attempt to acquire these securities. As of today it can not be stated that the applicant will be able to acquire Arrow under any circumstances. By the terms of their contract with Arrow, Kuhn Loeb was to complete the transaction on December 18th. Applicant is informed that this has not happened and that they have secured a further period of a few days in which to reach a decision in the matter. The Commission will be promptly advised of any information received on this subject.



It is not the purpose of this brief to defend the Transport deal. The operators here concerned bore only the relationship of sellers to that transaction. They were neither in control nor responsible for whatever the situation was in that matter. The instant application is a cooperative enterprise designed to pool resources, obtain new finances, and perpetuate management and control in the operators and their families. It will preserve the best features of the lines involved, improve the service, effectuate economies, stabilize the industry, and provide the only possible foreseeable future for these businesses other than the undesirable alternatives of outright sale of their individual properties to some strong financial interest, the more imminent event of liquidation to satisfy taxes in the event of death of substantial stockholders, or potential liquidation of the businesses in the bankruptcy court in the hazardous future. So sincere is the feeling of the operators 766 that control of this proposed enterprise must remain in the hands of experienced truckers that they would not hesitate to accept any reasonable order or suggestion of the Commission looking to this end.

As has been testified, there is no agreement, express or implied, for the sale or other transfer to Kuhn, Loeb of any securities beyond that fully set forth in the exhibits and record. It is, and has been, the intention that any arrangement for the handling of the 15,000 shares of preferred stock will be by competitive bid in the sense that it is proposed that negotiations be carried on with many as yet specifically unconsidered firms or persons who might be interested in the transaction. The net result of negotiations would be submitted to the Commission for their approval. This procedure was determined upon for many excellent reasons, including the reason that so far as within its powers applicant desired to have control over the hands in which the securities might fall. Putting it another way, they find themselves criticized by the Division for attempting to adopt a procedure which they felt might enable them to insure securities going into the hands of the general public rather than possible adverse interests, which it might have been very difficult to do under formal competitive bids as against informal competitive bids. It was further felt, and is still the opinion of the operators, that a better price could be secured and the public's as well as their own interests protected by making the best deal possible and then submitting it to 767 the Commission. Under formal competitive bids the very result, which the Division fears, might be brought about.<sup>2</sup>

<sup>2</sup> In accordance with the Division's procedure of misquoting and misparaphrasing testimony, Division says, page 37, "Mr. Seymour testified on query from the Examiner that these securities should be marketed through competitive bids but on question through his own counsel modified his position," thus attempting to infer that which is not the fact, namely, that Seymour said first that there would be competitive bids and then that there would not.

The operators deserve in this brief to brand as untrue the Division's statement on page 45 concerning this merger, "It was railroad-banker promoted in its inception and still is."

The applicant flatly denies that the failure of the rails to protest this application was at its instance or request or that it has any knowledge concerning the matter. There are many sound reasons why the rails may not have appeared, such as their possible desire to see more order in the industry, the fact that any particular railroad's interest in the territory involved is sectional, the fact that they may regard the consummated unification as one fly to swat instead of eight, their fear of shipper displeasure and retaliation should they intervene, a better understanding on their part of the national transportation policy, or the even still more practical reason that they as well as the truckmen appreciate from bitter experience the nature, extent, and severity of the competition between truck lines in the territory other than those involved in this transaction, and therefore understand and know the ridiculousness of any claim of a resultant monopoly.

Only one of the more than a thousand other truck lines in the territory for whom the Division is so concerned protested this application, and that company's protest was directed solely to the inclusion of the Southeastern Motor Lines and to grounds connected only with operating rights. While this non-protest from truckmen is a complete answer to the Division's fears that "The lines to be merged will, if this merger is approved, secure an absolute and unshakable hold on long-haul motor carrier traffic throughout this area," nevertheless one wonders why the Division has not discovered in this lack of protest proof of a "gigantic"

Examiner Baker: Do you believe that marketing the security, through competitive bids would be practicable?

Mr. Seymour: I can assure you, Mr. Examiner, that they will certainly market them through competitive bids.

Mr. Sullivan: I wish you would explain your question a little.

Mr. Examiner: I think you are using that in a rather technical sense, are you not?

Examiner Baker: What I had in mind is, instead of making a private agreement, that is, making an agreement through private negotiations with an underwriter, you would solicit bids from various underwriters.

The Witness: That is what I understood.

Examiner Baker: For the purchase of the entire issue of securities.

Mr. Sullivan (addressing himself to Examiner): In a rather formal manner, you have in mind, rather than by informally trading with several underwriters and then agreeing with the one that for various reasons, was felt to be best suited? You are thinking rather of a more formal method of doing it are you not?

Examiner Baker: Yes, that was my question.

Mr. Sullivan: Yes, I do not think Mr. Seymour understood his answer was directed to that, to the idea that he generally did contact a number of underwriters and to make the best deal possible.

Mr. Seymour: That is what I thought you meant.

Examiner Baker: Well, you did not have in mind, then, the formal solicitation of bids.

Mr. Seymour: Well, I had never really considered very seriously the detailed procedure that we might follow, other than that I was sure that preferred stock, as I have described it, in a company of this kind—that I did certainly think that we would have more than one or two opportunities to market the stock. I am sure that there are going to be several of them, and, obviously, we would not know where we could make the best arrangement.

We submit that assigning to Seymour the intent of having anything but informal competitive bids is another attempt to mislead the Commission.

conspiracy by which applicant, to obtain a monopoly, has persuaded the other truck lines to commit **Hari-Kari**.

It is indeed to "labor" a point to claim that the railroads' non-protest constitutes a keystone of proof of their wicked intention to acquire control of the merged companies, and such Charlie Chan reasoning is about on a par with the quality of logic which  
769 draws a parallel between Kuhn, Loeb's attempted acquisition as promoter's fees of "approximately one-tenth of the value of Transport's stock" and the Division's astounding discovery that "Kuhn, Loeb and Company will have, if this merger is approved, approximately the same percentage of stock interest in the new company, Associated Transport, Inc." To bring this rabbit out of the hat, it was necessary in the case of the Transport Company to assign a hypothetical value of \$22 a share to that common stock, and in the Associated's case (1) totally to disregard the fact that the Associated stock which Kuhn, Loeb would receive was in exchange for the stock of the Arrow Corporation, for which it was obligated to pay out of its pocket \$1,107,000 in cash as well as giving Associated other consideration in the form of cash and valuable records; and (2) to entirely eliminate from the Associated's capital stock structure \$1,500,000 preferred stock to be sold for working capital, no part of which was to go to Kuhn, Loeb.

The overzealous and unsuccessful efforts of the Division to turn up in the closet of Associated the triple skeletons of monopoly, investment bankers, and railroads recalls the delightful children's verse of A. A. Milne,

"I'm looking for an elephant behind another elephant behind another elephant that really isn't there!"

The proposed consolidation will result neither in undue elimination or restraint of competition nor will it be a "regulated monopoly." Any unification of carriers, competing even  
770 in part, must result in the numerical reduction of the number of competing carriers in a given territory, just as any commercial contract is a restraint of trade, but it does not necessarily follow that the effectiveness of competition, particularly in the motor-carrier field, will be materially lessened. As the Examiner indicated, and as the record and the Commission's experience must bear witness, there are "advantages in certain respects which smaller carriers have over large ones through their intimate relations with shippers and ability to render a more personalized service." Shippers have a tendency to divide traffic among competing lines. A real effort would be necessary on the part of applicant even to hold its present proportion of the total tonnage moving by truck in the effected territory. It is obvious that applicant, for reasons of common-sense and economy, would

not be able to use its present number of solicitors at any given point where the lines overlap to call on the same shipper and as the general manager of one competing truckman testified his company will be in a better position from a solicitation standpoint if the carriers are merged. Considering the great number of motor carriers presently operating in an industry characterized by the severity of its internal competition, is it not the more likely result that in the broad aspect of the matter competition with rail and other competing forms of transportation will be enhanced through the greater financial stability and all-around efficiency of applicant, and in the narrower field of intratruck competition, there will be little change?

The Department of Justice attempts to make much of the 771 size of the operation which would result from approval of this application. Admittedly at its inception it would be a company larger in gross volume than any other presently existing truck line. The Department is so upset by this fact that it terms the transaction a "giant merger" no less than six times in its brief (pages 2, 3, 42, 44, 47). Gulliver was a giant to the Lilliputians but a dwarf to the Brobdingnagians. Compared with rail, water, air, or even motor-bus companies, the applicant would be small. Even in the trucking industry applicant would not be appreciably larger in revenues than U. S. Truck Lines System nor in territorial area larger than the Interstate System. The query arises, if applicant's \$18,000,000 revenue in 1940 is an unmitigated evil to be abhorred, then must not the U. S. Truck Lines System with its fourteen or more million dollar revenue be purged (and they are presently in the process of acquiring another operation of great territorial scope, unhampered by the crusading of the Division). They are presently the largest truck system in the country, and this seems to be some sort of a crime. Logically it would follow then that when they were put out of the way, the same attention should be devoted to Interstate, and so on, until presumably truck transportation would be performed only by lines with one truck each and each with perhaps one hundred dollars of capital.

The Examiner refers, pursuant to stipulation entered into by the parties during the hearing, to the records of the Commission which indicate that the gross operating revenues in 1940 for Class I carriers, whose principal operations were in the New Eng-  
772 land, Middle Atlantic and Southern regions, are respectively \$40,082,627, \$97,449,156, \$49,051,190, or a total of \$186,582,937. Since the Commission's records further indicate that the total annual revenue of Class I carriers of property are probably less than half the grand total of all motor carriers of

property whose rates and service are subject to the jurisdiction of the Commission, it is indicated that the total revenues of motor carriers of property in the effected territory are probably at least \$373,165,946. The proportion of applicant's revenues of \$18,705,264 for the same period is approximately five percent. Assuredly this is a meager proportion of the total revenues and hardly a justification for the great clamor of the tocsin of monopoly which the Division seeks to sound.

Records of the Commission further indicate that there are subject to its jurisdiction upwards of 600,000 vehicles. Applicant's 3,000 vehicles would be half of one percent—an unlikely basis for the "cartelization" of an industry.

Aside from paying their compliments to the Examiner's approach to his duty as being "naïve" (page 5), his findings as "absurd" (page 44), his report as "feelingly written" (page 7), and failing "to deal with realities" (page 5), "in his anxiety to justify the proposed merger" (page 2), the Division subjects this officer of the Commission to the corrosive accusation that his exposition of motor-carrier competition for local or regional business was a "smoke screen" and "device" of "misleading comparisons" (pages 41 and 42, etc. The Examiner, 773 they say, would attempt to mislead the Commission by comparing the "\$40,082,627, total operating revenues for 1940 of Class I motor carriers in the six New England states" "with the aggregate 1940 revenues of Consolidated and McCarthy of \$6,467,173" for operations in three New England states (page 42). But the Commission's records, the facts, and the testimony are that all substantial trucking operations in New England are confined to Massachusetts, Connecticut, and Rhode Island, and McCarthy has sizable operations extending into New York State as well as a large percentage of revenue derived from interchange in that state, and Consolidated has most extensive operations in the states of New York, New Jersey, and Pennsylvania and derives a considerable portion of its revenues from such operations! Here, in their argument, is indeed the "razzle-dazzle" of which the Division speaks.

Examination of their contentions with respect to the Middle Atlantic and Southern regions finds the same kind of performance repeated and even more glaringly apparent. Although the Examiner has followed the classic, only practical and proper method in such cases of making comparisons between the revenues involved in the proposed unification and the revenues of remaining competition, they are pleased, no doubt through unfamiliarity with the practices and decisions of the Commission, to term it a "device used by applicant to illustrate competition." What other method



would they have the Examiner and the Commission use? They volunteered their expert services to the Commission in this proceeding lest in its naivety the Commission be misled by 774 applicant. One would have expected, after the delays sought and secured to study the case, that there would have been produced a practical substitute method and testimony which would have made this whole subject, as they would say, "crystal clear." The labors of the mountain produced only the mouse of witness Berquist's conclusions on the subject of competition in the effected territory and the effusions of a retired-railroad man with opinions "colored" by his own "property interest" as a water carrier who believes that the ancient railroad ways are the best. We invite the Commission's attention to the discrepancies between the facts and its records on the one hand and the opinions and conclusions of these witnesses on the other. The result of such a comparison would hardly, in the interests of accuracy, commend a substitution of the Division's methods for those of the Commission.

The Examiner in his report, says the Division, "deals at length with motor truck operations in the territory of the individual carriers concerned as related to the existing operations of such carriers but avoids all mention of motor carrier competition to those lines merged into one gigantic carrier." This statement shows a fundamental misconception of the nature of the trucking business. The Division, consciously or inadvertently, loses sight of the fact that the main volume of traffic will move in the future in the same territories and between the same points and places as it has moved in the past. Approval of the proposed transaction will neither change the shippers nor will it effect their markets. While improvement in service and efficiency of 775 operation may, and it is hoped that it will, result in attracting some business presently moved by competing forms of transportation, nevertheless, as we elsewhere indicated, this effect will be to enhance the competition with rail lines rather than to stifle any competition in the trucking industry. Indeed it appears from the testimony, the Commission's records and the Examiner's report that there are in the territory substantial lines as, for example, Akers and Carolina Freight Carriers, who have operating rights and offer direct service from the deep south to as far as New York State and northern Massachusetts, and that presently within the component companies of the merger there are no such operations. Approval, therefore, will add to rather than detract from the competitive situation respecting freight movements between these points. The Division insists (page 23) that the applicant failed to produce evidence showing common motor truck competition from Boston, Mass., to New Orleans, La. The

testimony was that there presently was no such truck service. Assuming that the applicant contemplated such a service, the Commission should indeed be surprised by a theory that the public interest requires persons desiring to ship by motor truck between those points must be deprived of the benefit of the institution of such a service for the reason that if there is no presently existing service one can not be inaugurated because, being the only operator, it would have a monopoly.

The remarkably convenient memory of the Division permits them to state (page 44 of their brief) that there is no testimony to support a finding that all of the principal points and many others are served by one or more rail carriers and that additional competition is provided by contract carriers and by carloading and forwarding companies. Applicant's Exhibit 18, introduced by the witness Mead and supported by considerable testimony as to the manner and method of rail operations through the territory is before the Commission as it was before the Examiner. The witness Mead also testified as to carloading operations in the territory, as did the shipper witness Tupper and various other truckers and shippers. They also avail themselves of this forgetfulness to suggest that the Examiner fallaciously based his findings on a theory that such competition is common knowledge of which the Commission could take judicial notice. Their memory of the quantity and quality of the evidence respecting rail and water carriers then apparently revives sufficiently to impel them to take the precaution of arguing that discussion or findings relative to such competition should be rejected in this case since they claim we are primarily concerned only with competition as between common carriers by motor truck. Such shifty open-field running leads to the surmise that the arguments just referred to were made only to produce a *raison d'être* for the next paragraph in which they attempt to influence the Commission, as they had previously attempted to intimidate the Examiner, by the wholly gratuitous inclusion in italics of a totally unveiled threat of court action if the Commission should have the temerity to decide this case in any manner contrary to their wishes.

Circumstances and time make impossible a seriatim and complete analysis of the Division's torture and distortion of the record, facts, and law. We make one further illustration by another quotation from their brief (page 47). Referring to the claimed economies they say, "The Examiner rightly characterizes evidence thereon as 'largely speculative'." Sheet 14 of the proposed report discloses that what the Examiner said was, "The evidence with respect to the amount of economies which can be effected is largely speculative, but there can be no doubt

that they would be important and substantial." Indeed, the Department of Justice Is Blind!

There seems to be something artificial and forced about the various fears expressed by the Division as to the end result of approval of this application. The present state of world affairs and the development of the trucking business, including the businesses of the component companies of the applicant, cry out for this unification as an offset and fighting weapon against whatever degree of rail monopoly presently exists. Any fears that the rails will acquire control of the applicant and thus expand or clinch their monopoly (which monopoly the Anti-Trust Division oddly enough seems to concede and condone (pages 39-41)) can only be based on the assumption that the Interstate Commerce Commission or other governmental body having jurisdiction of the matter will fail to enforce the provisions of law expressly designed to prohibit, without Commission approval, the accomplishment of such an eventuality. The same may be said with respect to the expressed suspicions that by or through the investment banking

778 firm of Kuhn, Loeb the same undesirable result might be achieved. While, from the present state of the statute it is not unlawful for Kuhn, Loeb to acquire control of a single truck line, including Associated Transport, yet aside from the fact that the truckmen themselves are not and would not be willing parties to such a procedure, nevertheless the law and penalties are sufficiently stringent to prevent Kuhn, Loeb or any one else, if they could acquire control of these properties, from managing them in the interests of the rails. If it is desirable in the public interest that independent truck transportation be preserved and fostered as a fresh and vital competitive influence in the transportation field, then so much more weighty is the argument that units of sufficient size and financial stability must be encouraged so that competition with other forms of transportation may extend beyond the point where it is presently likely to stagnate.

The Division has chosen to suggest that the Commission should not use the National Emergency to disregard its duty of deciding the case on the merits and foist on a distracted public a unification which at another time should be denied. The applicant throughout the proceedings and in its former brief has scrupulously refrained from stressing the immeasurable benefits to the National Defense and the public safety which necessarily must flow from the consummation of this unification. That the Division makes such a representation to the Commission is a recognition on their part of the utter and terrible necessity of coordinating and consolidating truck transportation lest the country experience the transportation chaos so wide-spread in England and

779 other countries from the first bombing of ports and rail facilities and concentrations. Applicant has felt, and still feels, such confidence in the other merits of the application that it desired to leave without comment the determination of such a matter to the sound judgment and sense of duty of the Commission members lest any one could urge that these truckmen sought to perpetuate another sin in the name of National Defense. The component companies of Associated Transport are presently and to the utmost of their ability devoting their time and effort foregoing profits in an all-out endeavor to do their part in these times. While they are naturally fretful and impatient that the legal processes delay the consummation of this unification which they earnestly believe will make possible a tremendous increase in their efficiency and usefulness, nevertheless, regardless of the outcome of these proceedings, there must not be and will not be any relaxation of their efforts in the public interest.

In closing, it is respectfully submitted to the attention of the Commission that, considered in the light of the plain facts of this case and the total lack of connection between the Division arguments and the law which the Commission is charged with administering, there seems to be no escape from the conclusion that the Anti-Trust Division, pursuing the concepts peculiar to its economic and political philosophy, seeks through its intervention herein to thwart the will of the people as expressed through their Congress and by extralegislative process to nullify the Motor Carrier Regulatory Acts ~~and~~ to negate the powers of the Motor Carrier Regulatory Body for the dual purpose of restoring 780 the "free market" in transportation and transferring the policing of this industry to the Division's group of economic and legal technicians who would then become the Bottleneck of the Trucking Business.

The application should be approved and without undue delay.  
Respectfully submitted.

CLAUDE A. COCHRAN,  
HUGH M. JOSELOFF,  
MORTIMER A. SULLIVAN,  
*For the Applicant,*

*1775 Broadway, New York City.*

DECEMBER 26, 1941.

CERTIFICATE OF SERVICE

I hereby certify that I have on the 26th day of December 1941 served a copy of the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed and with postage paid.

WILLIAM F. KLEPS.

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORP. ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

*Washington, D. C., Monday, January 26, 1942.*

The above-entitled matter came on for oral argument before the Commission at 10:00 o'clock, a. m.

Present: Commissioners Aitchison, Acting Chairman (presiding), Lee, Mahaffie, Splawn, Alldredge, Patterson, and Johnson.

Appearances: Mortimer A. Sullivan, Prudential Building, 1775 Broadway, New York, New York, appearing for Associated Transport, Inc., applicant. H. D. Horton, Charlotte, North Carolina, appearing for Associated Transport, Inc., applicant. B. M. Seymour, 1775 Broadway, New York, New York, appearing for Associated Transport, Inc., applicant. Everett J. Arbour, 1179 Main Street, Hartford, Connecticut, appearing for Associated Transport, Inc., applicant. Leonard D. Adkins, 15 Broad-  
783 Street, New York, New York, appearing for Associated Transport, Inc., applicant, and Kuhn, Loeb and Company. John S. Burchmore, 2106 Field Building, Chicago, Illinois, appearing for the National Industrial Traffic League. Haskeell Donoho, Solicitor's Office, U. S. Department of Agriculture, appearing for Secretary of Agriculture. W. S. Campfield, Box 718, Staunton, Virginia, appearing for Virginia State Horticultural Society. Berks-Lehigh Fruit Growers, West Virginia State Horticultural Society, and Appalachian Apples, Inc. Warren Woods, 735 Transportation Building, Washington, D. C., appearing for Andrew B. Crichton et al., d/b/a Super Service Motor Freight, Nashville, Tennessee. Thurman Arnold, Assistant Attorney-General, and Arne C. Wiprud, Special Assistant to the Attorney-General, Department of Justice Building, Washington, D. C., appearing for Anti-Trust Division. U. S. Department of Justice. Herbert S. Thatcher, Washington, D. C., appearing for The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers.



## PROCEEDINGS

Act. Chrmn. AITCHISON. The Commission has assigned for argument this morning Nos. MC-F-1612 and 1613. Mr. Sullivan, the applicant.

Mr. SULLIVAN. Mr. Chairman, Mr. H. D. Horton will proceed first for the applicant.

Act. Chrmn. AITCHISON. I don't have his name, sir. What is it?

Mr. SULLIVAN. Mr. H. D. Horton. Mr. Horton is the president of the Horton Motor Lines.

Act. Chrmn. AITCHISON. Oh, yes. That is all right.

Mr. SULLIVAN. Mr. Horton.

Argument of Mr. H. D. HORTON:

Mr. HORTON. Mr. Chairman and Gentlemen, I desire not to make the following statement extemporaneously. Arrow Corporation, having sound intra- and inter-state operations in the territory between Paterson, New Jersey, and Allentown, Pennsylvania, was included in the merger as being a desirable part of a sound, integrated public transport system in the affected territory. I have testified fully as to the value of Arrow's operations. Because Arrow stock was under option to the Transport Company, which in turn was controlled by Kuhn-Loeb and Company, an investment banking firm, it was necessary for Associated to make its acquisition contract with Transport instead of with Arrow stockholders.

786 We have recently been informed, and have so notified the Commission and the parties, that the Transport option expired as of the end of 1941. The contract between Transport and Associated is the uniform contract and was not calculated to cover the situation which has arisen. By a combination of circumstances, over which Associated has no control, Transport is in a position to, and does, claim that under the contract Associated is not released by the expiration of option from its obligation to acquire Arrow if the Commission approves the inclusion of Arrow in the merger and if Transport is able to negotiate a new contract to acquire Arrow by closing date.

The applicant does not willingly acquiesce in this state of facts. Accordingly, we have agreed to make available a few minutes of time to Mr. Leonard Adkins, attorney for Transport and Kuhn-Loeb Company, who no doubt will be able to present the claimed rights and equities of their situation more clearly and with more enthusiasm than the applicant. I do not propose to deal further with Arrow in my presentation.

Act. Chrmn. AITCHISON. Mr. Sullivan.

Mr. SULLIVAN. Sir, Mr. Horton, will continue for the applicant.

Act. Chrmn. AITCHISON. Well, is somebody going to make a statement of this case?

Mr. SULLIVAN. Mr. Horton will make a statement.

Act. Chrmn. AITCHISON. Very well:

787 Mr. HORTON. My name is H. D. Horton. I am chairman of the Board of Associated Transport, Inc., and president of Horton Motor Lines. My company has been growing substantially and steadily for a number of years, and in 1940 I found that my company's position was reaching a very dangerous stage. To meet the requirements placed upon it by the shipping public would require increased amounts of money each year for the purchase of equipment and the other things necessary to successfully prosecute our kind of business. My own personal position as the sole owner of Horton Motor Lines was also becoming more critical. I found myself in the position that in the event of my disability or death, since I was running practically a one-man company, that there would be no one to carry on successfully the affairs of my company, and in the event of my death the demands for inheritance taxes would be so great that it would be impossible for my company to meet them, and it would be faced with a necessity of a forced sale to any possible purchaser or the liquidation of the company. That situation I did not relish because within the company, since I had been pouring back into it in all the years of its growth all of the profits beyond the requirements for ordinary living, I had no outside moneys with which to meet any such demands, and any demand for estate or inheritance taxes would have had to be met by that property. I knew that about  
788 the same position—many of the heads of other companies in the east with whom I had been familiar for many years, were about in the same position because all of our businesses had been expanding steadily and fairly substantially.

In 1940, I concluded a contract for the sale of my company to The Transport Company on the basis of receiving 80 percent cash and 20 percent in stock. The 80 percent cash would have been sufficient to produce the security and safety for my wife and children that I wished to produce, and I agreed to go along and aid in the management of The Transport Company, and, while the application of Transport Company was pending before this Commission, I studied methods of producing economies in that operation and in improving the service of it for many weeks. Late in 1940 the Transport application was denied, and in reviewing my own affairs I found that my company's position and my personal position was even in a more precarious or dangerous position than it had been earlier. To meet the requirements of

the trade I knew that there were only four places at which to get money.

First, our profits. Our company had been built out of the profits of our company, all of them being ploughed back into the company, but sharply increasing costs and sharply increasing taxes made further demands on those profits impossible for profits to supply any more than a small amount of the increased

789 equipment and facilities necessary to continue to successfully prosecute our business; so we couldn't hope to get the moneys necessary to meet the demands of the shipping public out of profits. The remaining three places from which it could be had were bank loans, financing companies, and from the public. As to bank loans, I knew from previous experience in times of depression that bank loans can be disadvantageous and substantially dangerous in terms of decreased or vanishing profits or decreasing revenues. The same thing in part was true with the purchase of equipment through finance companies. They also had fixed due dates, so-called, possibly extending over a longer period of time. My company, I knew, was not large enough to go to the public with its securities, for two reasons:

First, it was not large enough in volume of business, and that it was a one-man company, and the investing public in general would not be interested. I felt, in investing in a one-man company. About that time the decision of the Transport case came out and seemed to me to point the way to accomplish the very things I wanted to, that I had been trying to do. After studying that very closely I decided to try to effect a coordination of a smaller number of companies. At that time I went to see Mr. Seymour, because in time I had come to realize that Mr. Seymour was a man of very fine experience, fair minded, and a man in whom I had a great deal of confidence.

Act. CHRM. AITCHISON. Who is Mr. Seymour?

790 Mr. HORRON. I beg your pardon?

Act. CHRM. AITCHISON. Who is Mr. Seymour?

Mr. HORRON. Mr. Seymour is presently the president of Associated Transport Company. Mr. Seymour saw the picture very much as I did and also realized from his many talks with the heads of other companies in the old Transport deal that many of the heads, such as Mr. Barnwell and Mr. Arbour and Mr. McCarthy, were in about the same position that I was in. Practically all of the trucking companies have been built, gentlemen, in the last several years, not out of invested money from the outside, but out of the profits of those companies being ploughed back into them.

Commr. SPLAWN. Before Mr. Seymour became president of this company what was his connection?

Mr. HORTON. Mr. Seymour was president of Transport Company.

Commr. SPLAWN. And what was he before that? Is he a financier or an operator of trucks?

Mr. HORTON. He was the owner of a company that leases trucks in New York. He is the owner of a company—a large taxicab company in New York and a part owner in an insurance company in New York. All of those connections I was thoroughly familiar with, and I know as well his other associates in all of those other companies.

Commr. ALLDREDGE. Is your business a corporation?

791 Mr. HORTON. Yes; Horton Motor—

Commr. ALLDREDGE. And in what state is it incorporated?

Mr. HORTON. Horton Motor Lines, sir, is incorporated in North Carolina. After this talk with Mr. Seymour we called on the heads of various companies that I felt would be in the same position, or approximately the same position, that I was in, and who I thought fitted well into the kind of picture that I saw as being the proper kind of set-up that we were going to hope to put together, the proper kind of set-up as to the types of companies and the types of service they performed. The territorial coverages offered both end-to-end services and overlapping services. After many months of conferences in Mr. Seymour's offices we found a company into which these companies could be merged. I found that many of these companies would not sacrifice the goodwill and reputation of their company by having them merged into Horton Motor Lines, nor would I like to incur the danger of having my own company subordinated to the Barnwell or Moran Company or the McCarthy or these other companies.

Commr. SPLAWN. Now, isn't it the proposal for each of these companies, such as your company, to continue to be an operating company and merely be owned by this new company?

792 Mr. HORTON. No; not at all, sir. We proposed to put them into one single integrated company just as soon as we could do so, because only in that manner do we feel we can produce the economies that we feel we must have to protect our future.

Commr. SPLAWN. You propose to exchange the stock of your company?

Mr. HORTON. No. I am not proposing to exchange a thing. I am proposing to sell my stock to a company that I feel will be a more stable company than I am.

Commr. ALLDREDGE. What position will you occupy with the new company?

Mr. HORTON. Chairman of the Board.

Commr. SPLAWN. And this stock will be listed on some stock exchange and sold to the general public?

Mr. HORTON. As is contemplated, we are asking for permission to sell 15,000 shares of \$100 par convertible stock to the public for working capital, but it is not contemplated that it be listed on any stock exchange.

Commr. SPLAWN. Through what agency would it be offered to the public?

Mr. HORTON. I should say, sir, through whatever agency offered the best arrangements for us. We have no arrangement for that or understanding for that.

Commr. SPLAWN. Is any of this preferred stock going to be offered?

Mr. HORTON. At least 15,000 shares of this stock of the 52,000 shares.

793 Commr. SPLAWN. How about the common stock?

Mr. HORTON. It is not contemplated that any of the common will be offered, sir. During all of these conferences we have had I would like to say to you, sir, that there have been no outside influences of any sort, and I have particular reference in that case to Kuhn, Loeb Company since they have been so frequently mentioned in this case. Kuhn, Loeb Company were never considered, never contacted until we were far along in putting this thing together, and our only contact with Kuhn, Loeb was because we knew they were owners of Transport Company. The Transport Company had an option to purchase Arrow Carrier Corporation, a property which we wished to include. I can say further that we had very considerable trouble in our negotiations with Kuhn, Loeb. They seemed to feel that they were entitled to a special treatment different from that accorded the seven other companies. We did not feel so, but after the seven companies simultaneously signed a contract on June 11, we did continue in our negotiations with Kuhn, Loeb, which finally resulted in them agreeing to put the Arrow Carrier Corporation into Transport on exactly the same basis that everybody else had agreed to come in on.

In these several months of conferences, we developed a contract which we feel is a very fair and impartial contract. In the present Transport Company the set-up is; myself as

794 Chairman of the Board; Mr. B. M. Seymour, president;

Mr. Everett Arbour, Chairman of the Board of Consolidated Motor Lines, is the vice president; and Mr. John J. McCarthy, Chairman of the Board of McCarthy Freight System, is secretary; Mr. R. W. Barnwell, now president of Barnwell



Brothers, is on the Board of Directors; Mr. Cliff Brock, president of the Southeastern, is on the Board of Directors; Mr. J. P. Altwater, executive vice president of the M. Moran Transportation Lines, Inc., is on the Board of Directors; Mr. Wiley Moore, owner of Transportation, Inc., is on the Board of Directors. The eighth man and the only man on the Board of Directors who is not the head of one of these operating companies is Mr. James Arnold, a member of the firm of Kuhn, Loeb, and it was well understood that when Mr. Arnold was elected for a short term to the Board of Directors, in the event that he did not resume that position, that Mr. Arnold would be replaced by Mr. Jack Acherman, the majority owner and president of Arrow Carrier Corporation.

We found up to along in the middle of the year we had been going along in all of these meetings sustaining out of our own pockets the expenses, but we found that audits were going to be necessary, additional traveling expense, the expense of prosecuting the case before this Commission, and we decided that we should have some expense fund to make equitable and fair the moneys that we were spending, and we decided in that 795 case to do that, and the best method we could follow to do that was to sell in the same proportion to each person, to the head of each company, an amount of \$1 common stock, and his holdings would be if and when the deal were put together in common stock. In other words, the auditors made the computations as to what our expected holdings would be in common stock in Associated Transport if and when put together; and I agreed to buy and did buy for cash and paid for approximately 12,000 shares of \$1 common stock. The head of each company did identically the same thing in the same proportion that I did. Not the same amount of stock, but in the same proportion of our eventual holdings. We felt that this money going into Associated Transport would be lost money in the event we did not get an affirmative decision from this Commission, and we wished to participate in the proper proportions. We did that. At the same time, after these many months of negotiations, we found that we needed a person of broad and deliberate judgment, of sound business ideas, to act more or less as an umpire, because, after all, we were seven rather vigorous heads of trucking companies and we had many disputes and arguments, and we were trying to arrive at the successful method of putting Associated Transport together, and we were all convinced that we needed more than ever Mr. Burge, Seymour. We convinced Mr. Seymour that there would be an attractive and interesting future and very profitable

796 future in the position for him and us if we could get him to stay with us in the future, and as a part of doing that we influenced Mr. Seymour to buy 31,240 shares of the \$1 common stock of the company, which is the amount that we ourselves bought, and to pay for it, so that he would have some monetary interest, some proprietary interest, in Associated Transport when it was put together.

You understand, gentlemen, that Mr. Seymour had no company to turn into this and would receive no sum from Associated Transport, and unless we required that he do this, he would have no ownership of any nature and be only an employee of Associated Transport. But the man was entirely too valuable as a good, sound business man, as a man who had made a very fine study of the possibilities of consolidation. I know this because I conferred with him for many weeks, and I had and still have a very fine respect for Mr. Seymour's ability to do a good job in our company, and he is the kind of man with whom I hope to be associated in future years, as are the heads of all of these other companies. We did, however, place restrictions on our own stock, and we placed restrictions on Mr. Seymour's stock. On our own stock it is not possible to transfer that stock to the public. It is transferrable only one time, and that is it is transferrable only to the key people in my corporation, so that they shall have some stock and ownership in Associated Transport.

797 In Mr. Seymour's case, we did not want him under any forced pressure or for any reason to dispose of that stock for any considerable period of time, and we have restricted it so that he cannot sell it to anybody for thirty months. It is our feeling that if Mr. Seymour stays with this company as its president and works with the heads of these companies on the Board of Directors for thirty months, that he will continue to stay with it for many years, and we certainly do hope that he will.

During this time we were using the records of The Transport Company, and about this time we were challenged as to our right to use those records. We countered by saying that certain of these records were public properties, since they had been filed with the Interstate Commerce Commission, but we found when we went into the matter more thoroughly that that was not true. The audits in The Transport case went as far back as 1932, and we had been using those audits and the studies in our attempt to put together the proper group of the companies to provide the strongest and most able service organization that we were able to organize. Our attorneys advised us that there was a responsibility on our part for the use of these records, and we entered into an agreement with The Transport Company for the

use of those records, and, after much bargaining and bickering, we finally arrived at a basis for the outright purchase of those records. We did not have too much money in the treasury because we did not put in too much in the beginning; so we agreed to convey to The Transport Company 9,000 shares of the \$1 common stock in exchange for the audits and studies made of the Transport deal, and we now have that in our possession.

In checking with the auditors who do that type of work, they advised us that it would cost us 50, 75, or 100,000 dollars possibly to duplicate the records that it was possible for us to buy from The Transport Company, and we were very anxious indeed—and felt we were keeping money in our treasury—to make this kind of a deal. We wished to produce a stock that we thought would be sufficiently sound so that, in the event that inheritance taxes in the future should come, there would not be any great difficulty or too great a sacrifice on the part of the heirs in finding a market for this stock. The reason I mentioned death and disability was that three or four months ago my doctor told me that I had two years to live. Well, I immediately put my affairs in order. I found out later, by consultation with other doctors, that he had made a mistake; but it started me thinking along the lines of what would happen to my wife and children when I was gone. So, I wished and insisted on the stock being very sound and solid. We wished to come to the Commission with a stock that was supported by more true net worth than the capital issues that we proposed to offer, and we are doing that today.

799 Every one of the heads of the companies that we proposed to take into Associated Transport expect to stay with Transport from now on. There is not the slightest vestige of sell-out in this deal. I wish to make that very clear, gentlemen. That is very important. I at this moment will say to you that in the building of my business I have a substantial business, and it is a fairly good profit earner, and yet at this moment I have a mortgage on my home and I have money borrowed on my life insurance simply because I can't take it out of the business. When this time comes and this 15,000 shares is sold to the public, I propose only to sell enough stock to make my home debt-free and pay my insurance and have a couple of hundred dollars in the bank. I never have had any money in the bank. And when I say "a couple of hundred dollars" I mean a couple of hundred dollars; I don't mean a couple hundred thousand.

This group of people is very able and willing to put this company together just as quickly as this Commission may require. If you require that we integrate these companies, we transfer all

the assets and liabilities and operating rights within twenty-four hours, we will do everything human to do it in twenty-four hours. We ask you to give us sufficient time so that we don't suffer unnecessary loss in transferring license tags and to give us time to get out from under warehouse leases and such things. We know we can put it together completely and have it as a single integrated operating system within a year, and I personally believe that it can be done in some time less than a year; but I am positive that within a year the job can be a hundred per cent done.

I am going to touch upon competition of the companies only having relation to that part of the territory from New York into the south, because that is the territory with which I am most familiar. I am deliberately passing over some of the things that we wish to say concerning the financial setup of the company because Mr. Seymour will follow me and will go into more details as to that, and Mr. Everett Arbour, chairman of the Board of Consolidated Company and vice president of Associated, will follow him with the remaining explanation of the competition in the territory north of Washington. I am more familiar than anyone else, except Mr. Arnold and Mr. Brock, with the territory south of Washington; so I propose to state to you gentlemen that, as the Commission has found and as I have known for many years, there is not the slightest question of doubt as to the remaining competition in the territory I serve performing every type of service and operations. I know that in the last two or three years those carriers have been growing as fast as I have been growing. I know one carrier in particular two years ago had two or three trucks and now he has twenty or thirty. I know that because he took a good amount of business away, the R. J. Reynolds Tobacco Company.

800 Many of the other companies, Akers and Hudson, Miller Motor Lines, Mason and Dixon—all of those carriers who have been operating for a long time, large carriers, class 1 carriers, have grown and are continuing to perform a service, in the case of Akers Motor Lines, from Atlanta into Boston in a direct service. In talking with Mr. Akers, as he testified in the case here, he is not at all concerned about this Transport application. He does not believe that it is going to affect him, except under the theory that some of our shippers wish to have more than one carrier hauling their freight. He says he is now operating from Atlanta directly into New England. I don't have that right, but we are trying to get it consolidating Consolidated Motor Lines and Horton's operation in this Transport deal. Horton Motor Lines compete primarily—not primarily, but does compete in the

same general area with Barnwell Brothers Company. Barnwell Brothers Company is almost wholly an operation between New York and Philadelphia and the Carolinas. Horton Motor Lines, while operating over the same general routes, is quite a different operator. We do have some business that is competitive with Barnwell Brothers, but by and large our operation is equally divided between long haul, medium haul, and short haul business, and that has proven to me to be a very sound method of putting together a trucking company. We have a large share of business

801 between New York, Baltimore, Philadelphia, and Washington; between Washington, Baltimore, Richmond, and between Richmond, Washington, and Greensboro; between Richmond and the Carolina points; between Durham and Winston-Salem and Greensboro down to South Carolina. We also have intermediate haul distances as far as from Scranton to Greensboro; from Scranton to Charlotte; from Baltimore to Greenville, distances of 500 miles, and we have some operations longer than Barnwell's operation, which would be from New York to Atlanta. But in that operation we have several competitors, such as Brooks Transportation, Davidson, York Motor Express, East Coast Freight Lines, Atlantic States Express, Harris Brothers, Roadway Express, Motor Transit, Lewis and Holmes, Great Southern Trucking Company, New South Express, Freidman's Motor Service, Horlacher Delivery, Richards Motor Freight, Branch Motor Express, Kirby and Kirby, Middlesex Transportation, Shein's Express, Pyramid Motor Freight, and literally hundreds of others.

I think there are some two hundred Class 1 carriers within that territory. You probably have heard it said that there is no competition between trucks and railroads. I would like to disabuse your minds of that fact, gentlemen, because I suffered the agony of seeing some of my freight go to the railroads a year and a half ago. When the railroads cut 3,500 rates, I did not feel it was possible to meet a lot of those rates. We saw a lot of that 802 freight go to the rails, and it is still on the rails, and they perform the service we had been performing prior to that time.

In our territory we have a tremendous number of fleets presently moving freight that I originally moved or that Barnwell moved, so we have that type of competition, and we have very serious competition from the forwarder companies, so I know that with the thousands of trucks moving in exactly the same territory and performing exactly the same type of service in the territory which I serve, generally from Atlanta to New York—all that eliminates any possible thought that there is not sufficient remaining competition.



COMM. LEE. There are probably a lot of other people down there who would like to go into the trucking business, too; aren't there?

MR. HORTON. I beg your pardon?

COMM. LEE. There are probably a lot of other people down there who would like to go into the trucking business, if there was necessity for it?

MR. HORTON. Well, they have been going in, sir. There are many, many more carriers down in that territory than there were in 1935, five times as many; Heaven only knows where they come from, but they are there; and in number of vehicles, there are fifteen or twenty times the number of trucks in that service as there were in 1935 or 1936. There are twice as many as  
803 there were two years ago. Thank you very much, gentlemen.

ACT. CHRMN. AITCHISON. Whom do we hear next?

MR. SULLIVAN. Mr. Seymour is going to speak.

ACT. CHRMN. AITCHISON. Will you be kind enough to give me a list of the gentlemen on your own side who are going to appear, and pass it up?

MR. SULLIVAN. Yes.

ACT. CHRMN. AITCHISON. Thank you.

804 ARGUMENT OF MR. B. M. SEYMOUR:

MR. SEYMOUR. My name is B. M. Seymour, president of the applicant company.

It was in the latter part of 1940 that I had many visits from many of the operators who are involved in the present application. All of them were interested in knowing whether there was any way that it would be possible for them to get together in some kind of a cooperative effort to make possible the security which Mr. Horton has spoken of, to make it possible to redistribute the risk which is inherent in this business and, more important, to make possible the effecting of substantial economies which certainly seem to be necessary, in view of the ever-mounting costs of doing business.

In the talks that I had with all of the men whose companies are involved in this application, my advice to them was to wait until the opinion on The Transport application was released and we had a chance to find out the views of the Commission. We had certainly a hope that in the opinion there would be a rather clear path outlined in so far as working out some plan which would permit of a cooperative effort such as we feel we have now submitted to the Commission.

I certainly want to say that in working out the contract as between the eight companies, that it was a very difficult kind of

a contract to work out. It must be borne in mind that in the case of each of the properties—in the case of Mr. Horton and Mr. Barnwell and the Consolidated and the McCarthy, they were businesses which had been built up—they were all really bootstrap operations. They had all been developed out of the earnings of the business; all of the men were very rugged individualists, and it was really quite difficult to get eight men to see eye to eye because it was necessary that we carry on a great deal and prolonged negotiations to find a basis of equality, in so far as the value of each individual's property was concerned. So I say that we probably selected the most difficult kind of a formula to bring about this consolidation of companies, because what it amounted to in substance was that each property had to be put into a common pool, and that meant that each owner of a company must satisfy himself and be sure that over a period of years to come that he was going to be able to get along on a friendly basis with the other men who owned the business jointly with him, and I assure you gentlemen that that is a very hard way to bring about a merger of properties.

In submitting the application to the Commission, I think that, briefly stated, I can say that the application is conspicuous by the fact, first, that it represents a hundred per cent exchange of stock and that, in addition to that, certainly the owners are going to remain in control of the property.

806 We have previously stated either in our brief or in the reply to exceptions that, in so far as we are concerned, we are perfectly willing, if the application be approved, that the Commission may order or may suggest that the present owners of the constituent properties shall remain in control of Associated Transport. That is the intention of all of the men who own the properties that are in the application, and we are perfectly willing and happy that that be a condition of the order.

The preferred stock was finally—or it is contemplated that it shall be issued on the basis of 80 percent of the net worth, and when I say "net worth" I mean the net worth as reflected in the report submitted to the Commission—and, incidentally, that net worth, after the audit was reduced, I think, in the aggregate will be some \$175,000, and that net worth is without any equipment appraisals, without any real estate appraisals, and after disregarding all intangibles. The common stock arbitrarily was set up on a basis of issuing one share of common stock for each \$2 of earnings as of the twelve months ending on April 30, 1941. The only reason we used that formula was that it produced what we thought was just about the right number of common shares. There was no other reason for it. We could have had twice as

many common shares just as easily. The other features of the application, or the contract between the companies, are that we have produced, certainly, a conservative capital structure.

807 The preferred stock and the common stock represent a total of four million—roughly, four and a half million dollars, and that compares to a net worth of \$4,900,000 as of April the 30th, or leaving a surplus net worth of \$472,000. That is on the basis of both the common and the preferred stock, because it is proposed that the common stock will be charged on the books at a dollar a share. The net worth remaining as of April 30 over the preferred is \$1,177,000, and that does not take into account the earnings which will have accumulated from April 30th of last year up until the time Associated is put together, if the application be approved.

Commr. ALLDREDGE. May I seek a little information on that point? Are all of these companies common carriers?

Mr. SEYMOUR. All with the exception of four.

Commr. ALLDREDGE. Well, has the Commission determined their operating rights and issued certificates to them, or is there anything remaining to be determined about that?

Mr. SEYMOUR. Well, Mr. Commissioner, I think substantially all of the certificates are final. There is a question as to some of the rights in connection with Southeastern. I know that in the case of Consolidated they have received their certificated rights, and I am sure that generally that is so as to the balance of the carrier companies, with the exception that I mentioned.

Commr. ALLDREDGE. You do not recall whether the cer-  
808 tificates have all been issued or not?

Mr. SEYMOUR. Well, I can—

Mr. SULLIVAN. In all cases the certificates themselves have not been issued. I think, however, in all cases where the certificates have not been issued, except Southeastern, they have been through the Division, and at least the rights authorized by the certificate division, as long as two and two and a half years ago. Some of the decisions in some of the cases have not come up yet.

Commr. ALLDREDGE. What I am coming to is this: It is probable, isn't it, that there is some adverse interest represented in these cases involving certificates and that they have not yet been determined? If you get together you will withdraw all opposition, I suppose, and those cases will cease to be prosecuted; is that right?

Mr. SEYMOUR. Well, I don't know what the answer to that would be, Mr. Commissioner.

Mr. SULLIVAN. I can only say to you, sir, that I don't know in checking over the certificate situations when this was being put together, I know of no case where there was controversy between the parties here or one was protesting another.

Commr. ALDREDGE. Mr. Horton's Line has been in cases here resisting the granting of authority to competing lines. I was just wondering whether there is some of that opposition  
809 still remaining among the carriers here.

Mr. SULLIVAN. So far as I know, Mr. Horton does not, but I would be glad to file a statement on that.

Commr. ALDREDGE. Do I understand that you only have what is called a compliance order?

Mr. SULLIVAN. Oh, no, sir.

Commr. ALDREDGE. And you have certificates, then?

Mr. SULLIVAN. I don't think it quite happens that way. I will give you an example. The M. Moran Transportation Line had a formal hearing in 1936. Exceptions were taken to the Examiner's report. There were hearings in 1937 before the Division: Mr. Eastman, Mr. Lee, and, I think, Mr. Mahaffie sat. A year later the Division affirmed and adopted the Examiner's report. That was in 1938. This is 1942 and nothing yet has happened in the way of a certificate, although there is nothing formal pending before the Commission. As to their necessity and compliance orders, which were only recommended by the field men, almost everybody has been through formal cases or had a formal situation like that, and it is only a clerical proposition. I assume the certificates themselves have not been handed out.

Commr. ALDREDGE. Well, you mean Division V has issued reports and orders finding you entitled to certificates and the certificates have not actually been issued; is that right?

810 Mr. SULLIVAN. I can speak for the Moran case. That happened in 1937. We argued it before the Division in 1938, I think, then these came out and, as I say, this is 1942. There were no appeals taken from their exceptions, and this is 1942, so I assume it is a carrier—

Commr. ALDREDGE. Don't those orders have a provision that if notices of appeal are filed within any certain time, that the matters are then held in abeyance until the issues are finally determined?

Mr. SULLIVAN. Yes; but in the case I speak of the only appeals that there ever were were after they filed exceptions, and somebody opened the matter, and the Division issued another formal order denying that.

Commr. ALDREDGE. I am just seeking information as to whether or not all of these rights have been finally determined, and there is nothing left to be done in that respect.

Mr. SULLIVAN. The situation, I think, is as I explained it to you.

Mr. SEYMOUR. In that connection, Mr. Commissioner, if the application be approved, out of the 36,000 miles of rights that the

companies have in total, something over 13,000 would be surrendered, about a third. There is that amount of duplication of rights.

811 **Commr. ALLDREDGE.** Pardon me. If it was simply a clerical matter, I don't understand why you did not have certificates issued to you so that that matter would be cleared up.

**Mr. SULLIVAN.** I am sorry, sir. It is my understanding that the actual issuance of the certificate was an administrative matter, that our rights were established by the order. The order itself of the Division is in detail and undoubtedly reads exactly the same as the certificates would read when it came out.

**Commr. ALLDREDGE.** Suppose the Commission approves your application. Is that going to foreclose the determination of controverted issues?

**Mr. SEYMOUR.** As between these companies involved?

**Commr. ALLDREDGE.** As between these companies.

**Mr. SEYMOUR.** I know of no issue as between these companies.

**Commr. ALLDREDGE.** You do not think there are any issues in these cases involving the issuance of certificates to the companies involving any company?

**Mr. SULLIVAN.** And, sir; I don't mean to talk two at once. The reason we did not go into that and have it cleared up before we came in here was because of the practice of the Commission that the Commission does not consider in a section Five case an acquisition proceeding, does not consider the status of operating rights to the degree we are dealing with it here, and we did not deal with it.

812 **Commr. ALLDREDGE.** That is what I thought, so there would still be questions to be determined?

**Mr. SULLIVAN.** I would not be able to answer that.

**Commr. PATTERSON.** Are there any contract carriers among these?

**Mr. SEYMOUR.** No. There are only three non-carrier companies. Two of them are real estate companies that own terminals. The other one is an equipment company owned by Mr. Horton, and the other is a sales company which would be discontinued if the application be approved.

**Act. Chmn. AITCHISON.** Well, I guess you can continue with your argument.

**Mr. SEYMOUR.** Going on from that point, why, we did endeavor, and we are very sure that we have succeeded in taking out of their contract as between the companies and in the application as submitted to the Commission, all matters that we feel could in any wise be objectionable, based upon the opinion in The Transport case. There are no employment contracts and certainly there are



no bankers, and there are no promoters, even though I have been referred to as a promoter. I am not a promoter. I am an operator. I never even knew a banker until two years ago, never even had met one. At this point, in connection with competition or remaining competition, I would like to make this rather quick observation, in addition to the statements made by Mr. Horton: In

1940, which is the only year that we have information from  
813 the Commission as to the volume of business, as to the amount of freight carried by motor trucks by companies under the jurisdiction of the Commission, using that year as a comparison, we find that these companies, which, in 1940 did \$18,000,000, that would be as against \$373,000,000 done by other companies handling freight by motor trucks up and down the Atlantic seaboard. In other comparisons, on the basis of units involved in this application, these companies own 3,200 units. That compares to 600,000 in the United States. Perhaps, arbitrarily, we could allocate a quarter of them to the Atlantic seaboard.

Commr. MAHAFFIE. Where do you get that 600,000 in the United States?

Mr. SEYMOUR. That information has been gathered from reports to the Commission. I meant trucks under the Commission's jurisdiction.

Commr. MAHAFFIE. That generally exceeds the number of valid plates outstanding; doesn't it?

Mr. SEYMOUR. This information came from a statistical study, Mr. Commissioner, that originated in the Commission. I think maybe we can find that.

Commr. MAHAFFIE. It may be right. I just wondered how it came to be so greatly in excess of the number of valid plates reported as outstanding. There may be some explanation. I don't know.

814 Mr. SEYMOUR. On the subject of labor, I would like to read this statement: "Labor through the Teamsters Union presently represents 80 to 85 percent of the total employees of the companies in the proposed unification. We intend, if this application is approved, to enter into contracts with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America looking to the perpetuation of peaceful relationships between Associated Transport and its employees, to the end of providing uninterrupted service to the shipping public. This contract will include appropriate and reasonable provisions covering discharges, severance compensation, transfer expenses, and the like, for the purpose of alleviating hardships to employees that may result from the Associated Transports' acquisition of the assets and its assumption of the liabilities and obligations of the component companies of the merger."

Commr. MAHAFFIE. Did you state that you have entered into that contract?

Mr. SEYMOUR. No. In the opinion in connection with The Transport case, it was stated that it was not considered that it would be in the public interest if several truck leasing companies were included, had the application been approved. In that application were three truck leasing companies, one of which I have a financial interest in. My interest and that of my family is roughly 15 percent. The control of the company is with

Mr. Leon Greenbaum and his family. I certainly can say to you that the metropolitan distributors are not going to lend themselves to any plan that would further the interest of any unrelated over-the-road trucking company. On the basis of what we feel are the merits of the application we certainly hope that it will be approved as soon as possible.

Commr. SPLAWN. The report of the Examiner contains all the benefits—his statement of benefits are the benefits of this proposal as you see them? Or have you any to add that he did not mention?

Mr. SEYMOUR. Well, I had several notes, Mr. Commissioner. I can summarize them rather quickly.

Commr. SPLAWN. Well, I will not ask you to do that. I just want to know if you considered his statement of the benefits adequate and complete.

Mr. SEYMOUR. Yes. Yes; I do.

Commr. ALDREDGE. Did I understand you wanted to say that if this consolidation is approved about a third of their authorized mileage will be abandoned?

Mr. SEYMOUR. Yes.

Commr. ALDREDGE. Is anybody going to explain that, where it occurs, and show us in an aggregate way how to appraise it?

Mr. SEYMOUR. Well, I am familiar with only the very bare fact that as a result of a study that was made—and I will make an inquiry as to whether the details are here—that—

Commr. ALDREDGE. You have no map illustrating it?

Mr. SEYMOUR. I don't know that one is presently available.

Commr. PATTERSON. When you get through will there be any fewer trucks on this mileage than there is now?

Mr. SEYMOUR. There will not be fewer trucks, but the present number of trucks, in our very considered opinion, will be able to carry something between 20 and 25 percent more freight than they carry now.

Commr. PATTERSON. And you will not abandon any mileage; you will just abandon some duplication of rights?

Mr. SEYMOUR. We will abandon duplication of rights; yes. The matter of economies has been covered in the Examiner's report, and a great deal of time—

Commr. ALLDREDGE. I misunderstood you. I thought you abandoned road mileage.

Mr. SEYMOUR. Duplicating rights.

Commr. ALLDREDGE. You simply abandoned duplicating rights?

Mr. SEYMOUR. Yes.

Commr. ALLDREDGE. No road mileage?

Mr. SEYMOUR. Oh, no. No.

Commr. SPLAWN. The record is complete as to the obligation of these existing companies and how they will be handled and how you expect to raise money for the future?

817 Mr. SEYMOUR. We have no intention of raising money other than through the hope for approval of being permitted to sell 15,000 shares of preferred stock.

Commr. ALLDREDGE. Well, as I understood Mr. Horton, he felt one of the advantages, from the point of view of his operation, would be a broader base on which to appeal to the investing public. The present situation, financially, of small operating—a relatively small operating company, as I gathered, he considered is more or less precarious. Now, just how are you going to get the money in the future as it may be needed? By selling more preferred stock? By issuing bonds?

Mr. SEYMOUR. You mean on the assumption that we were successful in raising a million and a half?

Commr. SPLAWN. Yes.

Mr. SEYMOUR. Frankly, Mr. Commissioner, we frankly and very honestly don't believe that that need will arise after the million and a half.

Commr. SPLAWN. You will be more fortunate than most combinations in financial history that we have had occasion to review if no need for further finances arises; will you not?

Mr. SEYMOUR. Well, I realize that it may be very difficult for any one to believe that there is the opportunity for economies that there is in this business. We have testified during the hearing that we would save by reduction in expense by the elimination of duplication of facilities an amount of some \$1,300,000 after taxes. I know that that looks as being rather fantastic. The truth of the matter is that we think it is decidedly conservative because, in addition to that, we believe that through increased efficiencies we can add to earnings an amount equivalent to that which we can save in direct expenses.

Commr. SPLAWN. If that pans out as you expect—let us assume for the moment that it will—will your company be contented with its present set-up; or will there be any new vistas and new opportunities to exchange stock for stock of other companies and expansions in different directions, and, if so, how will those things be—

Mr. SEYMOUR. I can answer that question, Mr. Commissioner, because it has been the subject of many conversations between us. There are two reasons why there are no ambitions beyond the present merger of these companies here involved:

First, because it is a little bit difficult to find men who are willing to take potluck as these men are; and,

Secondly, we feel that from here on that we are willing to grow with the industry. We are only interested—we have all the territorial coverage in these companies that is necessary to render a good and an adequate service to the public.

Commr. SPLAWN. The economies in operations, this million-odd cost you expect to save, is largely due to the elimination  
819 of this end-to-end overlapping where these companies meet in competition?

Mr. SEYMOUR. It comes in many sections, all items of expense. It happens that I have had conversations with insurance companies. I don't know why I should be a better buyer of insurance than any one else, but had the Associated Transport been in existence in 1941, our insurance would have cost the company \$275,000 less than they paid. That is on the basis of a proposal which a large—as a matter of fact, one or two large companies are willing to make, because they feel that a company of this size will do a much better safety job; that claims will be settled more quickly in cooperation with insurance companies' claim department, and they just feel that a setup which is going to be managed by nine good practical truckmen is going to produce a better result from a risk standpoint than with any one of the companies individually.

Commr. SPLAWN. That was due to the elimination of some units and the prospect of getting all the business, getting a big contract?

Mr. SEYMOUR. Oh; I think perhaps, Mr. Commissioner, that may have been a consideration to the carrier. They did not admit it to me, but that may very well have been so. In going down the line—and these projections of economies are matters that have been considered by all of us. I mean,

820 over a period of many weeks, days and days were devoted to it because, if I may use this slang, we certainly did not want to kid ourselves, and moving into sales, tariffs, and advertising, we have projected a saving of \$150,000 because obviously we could not go ahead and have the same number of solicitors calling on shippers as call on shippers as representing the individual companies. We could not have eight solicitors calling on one shipper for one company; and looking on down into maintenance, I can say only this in connection with maintenance; that there are even in this company—and these are of the better car-

riers—there are companies who conduct maintenance on the basis of—I don't know what you would call it; a sort of a hammer and tong operation. There seems to be no—certainly there is no periodical inspection. Certainly there is no scientific approach to maintenance. Yet, there are several others that really do a very wonderful job of maintenance, and certainly we are going to take the standard of the poor ones up to the standard of the good ones. We certainly are not going to take the standard of the good ones down to the poor ones.

Commr. SPLAWN. When you consider all the salaries and your divisional organization, regional organization, whatever will be necessary under this new set-up, you find that the total overhead adds up less than the aggregate of the overhead of these eight companies?

821 Mr. SEYMOUR. We have very carefully budgeted the expense of the so-called general office. All of the personnel that we will have—and it will be primarily limited to that of the setup to look after the control of the business—will be taken from the organization of the constituent companies, and we have set ourselves to an expense in connection with the top office of \$175,000 a year.

Commr. SPLAWN. When Mr. Horton, Mr. Barnwell, and these men who built these companies go out after business personally, they have demonstrated they know how to get business. When they become general officers in this big organization and send out employees to contact the shippers, do you assume that these employees will be as effective as business getters as the men who built these eight companies?

Mr. SEYMOUR. Mr. Commissioner, the reason that Mr. Horton and these other gentlemen who have built this business up almost from nothing have succeeded is because they were working for a company which represented everything they have. The Associated Transport is likewise everything they have, and I think that the incentive is going to remain.

Commr. SPLAWN. Right there is where I wish you, as a financier, would tell us about the future plans for selling the stock of these companies. If these men come in and make this company a success in the next three or four years, would you anticipate—  
822 as Mr. Horton indicates, he is about ready to retire. These other gentlemen probably are, too. Is it contemplated that the stock will be widely sold sometime in the next few years?

Mr. SEYMOUR. Mr. Commissioner, Item No. 1:

We are perfectly willing that the Commission, either in an order or a suggestion, say to us that the control of this company shall remain in the hands of the present owners;



Secondly: These men aren't really very old. I mean they are relatively young, and, in addition to that, why, I am very certain, or I would want to have nothing to do with it—but these men are going to stay with this business until all of us are old men, and the only sale of stock that is contemplated is the sale of some stock to raise working capital, and the only protection and security that the individuals are interested in, is at least being the owner of stock if anything happens to them and if their families have to have something that they can pay taxes with, that they will have a stock that they can sell either to the group or to someone else. There is no public offering contemplated, and if there was, I assume that we would have to come, certainly, to the Commission.

COMM. ALDREDGE. Where will your general office be?

MR. SEYMOUR. New York. There is one other thing in connection—

COMM. ALDREDGE. Is that a good place for an operating office?

823 MR. SEYMOUR. Yes; I think it is probably about as central as any other place. We have no particular views as to where it should be. As far as we are concerned, we would just as soon it would be anywhere. In connection with the statement Mr. Horton brought up, and which is a matter of concern to all of the operators, in the event that anything happens to them because they are all pretty much the heads of one-man businesses, certainly under this setup management would be perpetuated. All of them are. And that, to a very great extent, alleviates much of the danger because at least their interest, they feel, is going to continue to be in good hands.

Act. CHRM. AITCHISON. Does that conclude your presentation, Mr. Seymour?

MR. SEYMOUR. I just wanted to make this one other comment. Mr. Commissioner said as a financier, what were my views? I certainly am not a financier. Yes. Thank you.

Act. CHRM. AITCHISON. Mr. Arbour.

824

Argument of Mr. EVERETT J. ARBOUR:

MR. ARBOUR. Mr. Chairman, and Gentlemen, my name is Everett J. Arbour, chairman of the Board of Consolidated Motor Lines, also vice president of The Associated Transport, the applicant in this proceeding. First, gentlemen; I would like to concur fully in the statements that have been made by the two previous speakers, Mr. Horton and Mr. Seymour, and particularly in the last statement that was made about we as the heads of the present company remaining in this Associated Transport.

If myself or my father, who happen to be the largest holders in Consolidated, thought for one moment that the present heads such as Jack McCarthy, Bob Barnwell, and Cliff Brock, had any idea that this was a sell-out whatsoever, I absolutely would not be interested.

Act. Chrmn. ARCHISON. I suppose somebody here later is going to debate the question as to whether or not we can properly condition our approval upon personnel or management, inasmuch as we all know that people die and die suddenly, or they exercise their rights as citizens and go into other employments or Uncle Sam comes along and puts them in a camp.

Mr. ARBOUR. Mr. Commissioner, I think you have brought about just what I am looking for. If something happened to me, I would feel a lot safer with my family with these seven men, whom I have known all my life, to protect the future  
825 interest of my family.

Act. Chrmn. ARCHISON. Eventually they will all pass away.

Mr. ARBOUR. Well, I think in that time we will be able to produce understudies, men who come along, men who know enough about it to take over those reins. However, gentlemen, my reason at this time is primarily to touch upon one subject that I think is of utmost importance and that I know quite thoroughly, being an operating man—practical operating man—that is my function—and that is one of competition.

There have been several reports made to Congress over a period of years that we had an oversupply of transportation in this company. I will agree that was up until now. However, in reference to remaining competition I want to concur wholly and say that the analysis of the competition up and down the Atlantic seaboard over which this combination would operate, as expressed by the Examiner's report between sheets 24 through 40, is one of the finest analyses of competition, and I certainly do not want to go into further detail, because I think that covers the subject pretty well with probably this added fact: That, in our analysis and studies from which this report was made, some of the facts and details were taken and we presented in our Exhibits in the New England area some 350 carriers; in the Middle Atlantic area  
some 350 more carriers, and in the southern area some 325

826 carriers. In addition to that, the files of the Commission were made a matter of record by stipulation, and I think, to me, the most important factor was that there were shippers who testified throughout the case from all sections of the Atlantic seaboard, and all of them unanimously stated that there would remain such existing competition; that they were using that competition and that they would continue to use that competition, and,

as a practical operator, I can assure you that there is just that competition; and I want to further emphasize that, particularly along the industrial area of New England, that the rail—that I know the rail competition—and I know it is a fact in the other territories—is very, very strenuous competition, and the private carrier and the medium haul and short haul which my company is engaged in with the private carrier is a very, very potent factor. We also have the contract carriers and the forwarding companies which are very, very heavy competitors, and that I can state from actual experience operating in that territory.

Commr. ALLDREDGE. Is the forwarding company a competitor?

Mr. ARBOUR. Yes.

Commr. ALLDREDGE. It uses some motor carriers to perform its service. Does it use yours?

Mr. ARBOUR. No; we don't have any forwarding company business whatsoever, not a pound. Further, as a practical operating man, I look upon this consolidation as an end-to-end  
827 consolidation. While there is some overlapping, there are at least five companies, namely, Consolidated, Arrow, Horton, Southeastern Transportation, who have very, very little overlapping, practically none. Certainly there is no overlapping competition amongst those five. However, there is some overlapping competition in some of the areas. One of them is Consolidated, and also McCarthy. The McCarthy Freight system operates in the same territory as Consolidated does, but—

Commr. LEE. Where does Consolidated operate?

Mr. ARBOUR. Consolidated operates, roughly, in a triangle between Boston, Buffalo, and Philadelphia, and intermediate points. The McCarthy operations are in Massachusetts and Rhode Island. I think they have rights as far west as Albany. Their operation is quite different from Consolidated's operation. McCarthy is strictly a short-haul carrier. His operation in the great majority is in the eastern section of Massachusetts, short-haul points. He has no rights into New York City. On the other hand, Consolidated's operation is mainly in the four metropolitan areas, Philadelphia, Newark, New York, and Boston. McCarthy only operates in one of those metropolitan areas, that of Boston, and the predominance of his volume is from short-haul points, such as Rhode Island, eastern Massachusetts, central Massachusetts, in and out of Boston; while Consolidated's operation in and from

Boston is primarily—I don't mean primarily, but I mean  
828 in the majority—from Philadelphia, Newark, New York, lower Connecticut, western New York, into Boston, and our operation is mostly what we call medium-haul operation into those territories in which McCarthy does not operate. He is also very

strong in the eastern Massachusetts area, and Consolidated is comparatively weak in that territory, and I think that is true vice versa. As a matter of fact, I know it is true vice versa in Connecticut where Consolidated's home is and where they are exceedingly strong.

You have another overlapping in the Moran-Consolidated. Consolidated's operation does extend into New York State, but there again you have got a different operation between these two companies. Moran handles many, many peddle runs, peddle run operator, as we call them, in that territory. Forty-five percent of his total volume is intrastate business. On the other hand, Consolidated has very few peddle runs, and only twenty-five percent of that volume which originates in New York State is intrastate business, so there is not as much overlapping as there might look to be from the picture or a map and, particularly, so far as the type of operation, and, of course, Moran's rights are many times broader than Consolidated's in the State of New York. Insofar as Horton and Barnwell are concerned, I think Mr. Horton covered that pretty well.

There has been some fear expressed that a direct through  
829 service by the combined companies would present some motor competition. From a practical standpoint, I would like to go into that. In the first place, this company would handle what we in the truck industry refer to as three types of transportation, short-haul, medium-haul, and long-haul. In an analysis and study which I made, I find that these three types are about one-third each, so, therefore, the fear will consist essentially of only against one-third of the combined operations of the company.

Then, again, we have got a historical background for an argument. We have such systems operating in this country, true enough. None of them along the Atlantic seaboard, although there are some operators that operate from the south into New England, and substantially so today. There are east-west operations such as the Interstate System, the Spectre Motor Freight, Keeshin System, U. S. Truck Line System, and any number of others, and I know, as a matter of fact, as a practical operator, that the competition of those systems has not been impaired and has flourished and grown equally, and in many cases more so than these systems have traveling from east to west. I can go to something closer to home. My company is the result today of several consolidations, the last of which the Commission approved in 1937, and I can definitely state to you gentlemen that our competition—that allowed us to extend our operation, by the  
830 way, from New England into New York State, and from

New York into the Philadelphia area, and I can say that our competition has not been impaired. They have flourished; they have grown, just as substantially as the Consolidated Motor Lines has, and that is a matter of record. I can tell you that, from a practical standpoint.

There has been a further contention made that a lot of this interchange freight that we now give to connecting line carriers would be taken away to the detriment of these carriers. I think, gentlemen, that is not founded. That is founded on a fear which will not prove true, for this reason:

First of all, all of the freight that is being turned over to the companies in this combination by other interline carriers, it is only reasonable to believe, will be diverted to the other independent carriers, and I think you will find that the freight that might be turned over by these carriers to each other under the combination or go through direct will no more than offset that diversion from the independent to the independent. Furthermore, I again refer you to the testimony of the shippers. They very definitely are today and have been for a long time routing their freight. We all honor shipper routings. Much of this interchange freight is shipper routed, and in their statement here before the Examiner, they definitely stated that they are using these competing lines, will continue to use them because they will not place all  
831 their eggs in one basket, as several of them put it, so I think, gentlemen, from that fear of competition it will pretty well equal itself out.

Now, insofar as this interchange is concerned, it has many advantages. In the first place, it eliminates delays, and particularly in the New York gateway, where we make a tremendous interchange. At the present time the facilities in New York are terribly congested. I think I can better explain that by giving you a practical operation. Today we pick up freight going to points south, or Washington, Baltimore, and points south. That vehicle leaves New England that evening and arrives in New York some time between five and eight o'clock the next morning. We contact a connecting line carrier and try to make a time whereby it is convenient to both of us that we can interchange that freight, first, because we don't want to, as we call it in truckmen's language, float it if we can help—try to make an interchange from one body to another. Secondly, to make it so as when the vehicles do meet they won't be held up any too long. At best, that freight will not leave New York City until that evening, and between his unit and our unit that freight is delayed at least twelve hours. Under an operation under this combination I definitely am of the opinion, and I know, that that freight would not even go through New



York. We would route around New York; that the unit  
832 would go from one end to destination. Either the complete unit—

Commr. PATTERSON. What would be the longest haul you would give a given shipment?

Mr. ARBOUR. Well, a given shipment at the present time, I believe, that from Boston to, say, Atlanta, is probably as long as—I think Transportation has some rights in New Orleans, but they are not a practical operation.

Commr. PATTERSON. Well, as a practical truckman, what is the longest distance you do give a given shipment now to haul it economically by truck?

Mr. ARBOUR. Well, I believe at the present time, and from the studies that I have made of my competition, many of which are in the long-haul business, that I think today an eight- or nine-hundred-mile haul has been shown to be very profitable. Now, I think that has a lot to do, Mr. Commissioner, with the territory in which you are operating.

Commr. ALLDREDGE. You say "very profitable"?

Mr. ARBOUR. Yes.

Commr. ALLDREDGE. That has a lot to do with the rates under which they operate, too; doesn't it?

Mr. ARBOUR. Yes; naturally, the intake governs and, naturally, you get that from the rates. But the rates as a whole, Mr. Commissioner, would not be the same all over the country. I know that in the New England area we try to concentrate in and  
833 to the metropolitan areas from the Connecticut area around 120,175 miles, and in that area we find that that type haul is better. I know in New York State it extends for 300 miles where it is a better operation to operate nearer up there, whereas in Connecticut it is a better operation to operate one hundred miles. You get into the congested areas, traffic conditions are involved, and you get out in the wide open spaces—the best example of that is that I know that recently labor in one area was 3 cents, 3½ cents a mile. When you get into New England you pay 5½ cents and 6 cents a mile.

Commr. PATTERSON. Under this arrangement would the average haul increase or decrease?

Mr. ARBOUR. The average haul would be pretty much the same as it is now. The freight would not go in any different unit.

Commr. PATTERSON. You just stated it in a different way.

Mr. ARBOUR. But the pick up and delivery of the freight is exactly the same, although in practical operation instead of exchange at Philadelphia or Newark. We may start him from a southern location in New England rather than northern New

England as we do now to get as much of the haul out of him as we can because we can't go by New York. Under my statement, Mr. Commissioner, my idea was to route him around over the Washington Bridge and to New Jersey in order to get him away from the traffic at the Port of New York, which is terrific.

834 Commr. PATTERSON. These employees would then all be re-assigned?

Mr. ARBOUR. No; at the present time a man may be operating between Springfield and New York. His operation now might be Springfield and the Washington Bridge, where an exchange of power units would be made, and the fellow who has been handling from New York to Philadelphia would just exchange the power unit. Or they may exchange drivers completely and the power unit go along. I mean, so far as the human change is concerned, there would be very little of that, in my opinion.

Commr. SFLAWN. You classified these hauls as short, medium, and long. What is the average of the long haul, by and large?

Mr. ARBOUR. I would say the average of the long haul, by and large, in this is about 5 to 600 miles. Furthermore, there is a tremendous saving to be made in the elimination of rehandling; especially when you try to rehandle in congested terminal areas the damage is terrific, and the shortages, known to us as os. and d's, they amount to a terrific amount, and at this time when it is absolutely necessary to get as much out of every unit as you possibly can in order to meet the demands that are being made upon you today—and particularly from our area the extra twelve hours of production that we could get out of those units would be of tremendous help.

835 Commr. LEE. You do not interchange equipment now? I say, you do not interchange equipment now?

Mr. ARBOUR. We do on a very small scale. I have had much experience with interchange of equipment. As a matter of fact, before the Commission approved our consolidation in 1937 we interchanged bodies at New York with another line, and they took our body up and we took theirs, and the same thing happened at Albany, where the Simpson Lines, which we bought, were taking our bodies. My experience in the interchange of bodies has not been good. It has been far from good, and the only reason that I extended into Philadelphia and into New York State is because that did not work out from a practical operation. The best example of that is that in time we were hauling about two bodies a day from New England to Philadelphia. We were arriving at Philadelphia—I don't care how closely your sched-

ule—your trucks to meet at New York, they just don't meet, and this went for five years, so we gave it plenty of opportunity to work. Our vehicles were getting into Philadelphia at eleven or twelve o'clock the next morning. Our competition delivered their freight at 8, 9, and 10. Shortly after we got our rights to operate and we operated direct we increased from about 24 loads a week to 70 loads a week from New England into the Philadelphia area. The same identical procedure was carried on between New England and New York State west of Albany, and exactly the same situation occurred there. We corrected that by  
836 asking your permission to bless the consolidation of Simpson Transportation Lines, and it has been very beneficial, and our shipments have improved tremendously.

There are two other items that I think are worthy of note here, and I think that is maintenance and safety. Particularly as to the questions that were asked Mr. Seymour as to economies, our company is one of two in this combination which has had some semblance of preventive maintenance. We have gone into it quite extensively, I might say, just as far as we thought we could with our resources, but we are a long way from the goal we would like to reach with our maintenance. In the small way that we went into it we eliminated 35 percent of our road breakdowns. We got much more out of our vehicles because we cured them before they were sick, and we scheduled them into inspection stations at a time when we didn't need the power unit so as we would get as much production out of the unit as was possible. Under these plans I know that the Horton Lines also are pretty well under preventive maintenance, and outside of that I think I am safe in saying—I know that maintenance is just an ordinary repair job, and after the beast has been ill for quite a while it takes longer to cure him than if you stop it before it starts. That is the theory we have applied to it.

Now, if that were extended throughout this combination it would save a tremendous amount of unit time. I mean by  
837 that that we could utilize equipment much more than we are now. I would visualize, and my recommendation would be two or three central repair shops fully equipped completely so that units could be built at those areas and put in stock in the various locations so that quick changes could be made, and you would get practically 24 hours a day out of your units or close to it, and almost 365 days a year. We have increased the life of our units in our territory tremendously under this program. Also we could take advantage of any technological improvements. In our own setup we have dynamometer setups. The only other one I know of is Horton. In the last year we have made a saving

of some \$65,000 in gasoline. Then we are the only company in this organization who are self-insurers. We have had that for six years.

COMM. ALLDREDGE. Self-insurers?

MR. ARBOUR. That is right, to a certain extent, Mr. Commissioner. We carry the first \$10,000 and then reinsure from there on.

COMM. ALLDREDGE. Is that the way the Consolidated would save this very large amount?

MR. ARBOUR. In my opinion, you could do it that way, or one other way, Mr. Commissioner, because, since we have proven to the insurance companies that we can make that saving, they are now willing to write about 7 percent cheaper than they were before, so you might use an insurance company or you might  
838 extend this self-insurance. But I might say this: Whether you use any insurance company or not—

COMM. ALLDREDGE. Which is really no insurance at all in the technical sense?

MR. ARBOUR. What?

COMM. ALLDREDGE. Which is really no insurance at all in the technical sense? That is right; isn't it?

MR. ARBOUR. That is right, but I would say this, that whether you place it with an insurance company or whether you are self-insurers, that our opinion is, with safety organization, with road patrols that we have had to inaugurate in our organization—they certainly should be extended throughout this entire system and with very little cost and very little expense we could maintain that safety program and that road patrol. I mean we could extend it to complete this system for very little cost and, gentlemen, that has reduced our accident frequency during the past six years by over 45 percent, and when you reduce accident frequency, you reduce hazards to the public on the highway, because every breakdown is a potential accident.

COMM. PATTERSON. Well, that is not anything peculiar to a consolidated company? Even the smallest company could do that?

MR. ARBOUR. No; they could not, Mr. Commissioner, because you have to have enough to work with to produce such an organization, and in my little company we spent something  
839 like \$70,000 or \$80,000 in our work, and a smaller company could not do that. We patrol every mile of our highways.

COMM. PATTERSON. Does your maintenance cost you more per mile than than a smaller company's or the larger companies'?

MR. ARBOUR. Well, I can refer you to the record here. We have the lowest maintenance cost of any company involved in this record.

Commr. PATTERSON. Then it pays you to do it?

Mr. ARBOUR. That is right.

Commr. PATTERSON. It would pay a smaller company to do it?

Mr. ARBOUR. That is right, but what I am driving at, Mr. Commissioner, is unless you do it on a large scale it just does not save you anything. You cannot save anything by it.

Commr. PATTERSON. Well, I do it with my automobile, and I only have one.

Mr. ARBOUR. I would also recommend standardization of units—I mean standardization of facilities in particular localities.

Commr. ALLDREDGE. Is somebody, now, going to tell us how all this is going to be translated into public interest? Is the public going to get the benefit out of it from improved service, or lower rates, or both?

Mr. ARBOUR. Well, Mr. Commissioner, I tried to convey—probably I missed my point—that we would improve service tremendously by getting this equipment. I tried to prove that by direct route haul that we could improve the service by 12 hours.

Commr. ALLDREDGE. I thought you were emphasizing the saving of expense.

Mr. ARBOUR. No. I tried to say that the maintenance and safety will help and improve the service and will also save expense.

And, in concluding—

Commr. ALLDREDGE. You are not urging upon us any thought that this will result in any lowering of rates?

Mr. ARBOUR. I am not, but I can say this, make this statement: That it certainly will help maintain as near the present level, because at the end you wind up as to what your costs are, what have you got to get for your work, regardless of whether it is freight rates or what it is, in my opinion?

Commr. ALLDREDGE. Well, the way these motor carriers have been doing is winding up in the way the railroads have published them; isn't it?

Mr. ARBOUR. Well, I am almost going to have to agree with you in some sections.

Commr. ALLDREDGE. In New England you have a different system?

Mr. ARBOUR. I did not want to bring that out.

841 But in concluding, gentlemen, from my experience I do not believe—and mine has been a practical experience from other consolidations—that anybody is going to be hurt by this combination. I think it will help the public, and particularly the shipping public, and I think it is a progressive step in the industry, and I hope that you will give it your favorable consideration.



Act. Chrmn. AITCHISON. Mr. Adkins. Are you gentlemen going to save any time for reply?

Mr. SULLIVAN. I was wondering. I think we are, because I know Mr. Adkins told me he would be brief. We originally intended to.

Act. Chrmn. AITCHISON. Mr. Adkins.

842. Argument of Mr. LEONARD D. ADKINS:

Mr. ADKINS. May it please the Commission, my name is Leonard D. Adkins. I am counsel for The Transport Company and for Kuhn, Loeb and Company. Mr. Sullivan has been good enough to allow me a few minutes of his time so that I can explain to the Commission the somewhat anomalous situation in which Arrow Carrier Corporation is in this picture.

In 1940, The Transport Company, which is not, of course, the same corporation as Associated Transport, entered into an agreement with the stockholders of Arrow Carrier Corporation. That agreement was made in connection with the application which The Transport Company then had pending before the Commission for a unification of a large group of motor carriers. That agreement provided for the sale of the stock of Arrow Carrier Corporation for \$1,100,000 approximately, payable in cash. When the Commission disapproved the application of The Transport Company, the Arrow contract remained in effect. It was extended from time to time in order to see what, if anything, could be worked out. The last extension, aside from one for a week in December in trying to work it out, was made in April 1941. In connection with the extensions, the Transport Company bought outright the preferred stock of Arrow for \$107,000. That was its par value,

and it paid a hundred thousand dollars in cash on account  
843 of the purchase price of the common stock, leaving \$900,000 still to be paid. Kuhn, Loeb lent the Transport Company to make those payments, so that in December 1941, Transport had in effect an option to complete that purchase by paying \$900,000. It was an option because the contract expressly provided that if Transport selected not to go ahead, the only penalty would be the forfeiture of the hundred thousand dollars. When it came to be December 1941, and this proceeding was not closed, strong efforts were made to persuade Arrow stockholders to make a further extension of the contract until such time as this proceeding could be determined. They were not willing to do that. They insisted on being paid the \$900,000 in cash or the equivalent of cash—that is, short term notes of a solvent obligor—and one of the reasons at least they would not make the extension was because they were afraid that if that transaction were closed in 1942 instead of 1941, the change in the income tax on capital gains might be

such as to materially reduce their actual price they would get. I don't know about their tax situation, but I understand that Mr. Ackerman and his associates, like most of these gentlemen here, built up their companies from a small beginning. They had, therefore, a low tax cost for their stock and a high tax profit, and the income tax rates made a material difference to them. As result of this situation, there is not at the moment and contract between The Transport Company or Kuhn, Loeb and Company and the stockholders of Arrow Carrier Corporation.

844 We have had conversations with the stockholders of Arrow, and it is our belief that they would be prepared now to make a new contract for cash if this transaction were to go through. I can't promise that, but that is our belief and expectation, that if the Commission does authorize the acquisition of Arrow by Associated Transport it will be possible for Transport Company to acquire the stock and turn it in. Mr. Horton correctly stated that Associated is obligated under its contract with Transport to acquire the Arrow stock if the Commission approves the acquisition. Similarly, Transport is obligated to turn it in if the Commission approves the acquisition. Of course, if Transport cannot get the Arrow stock, Associated cannot acquire it, and it is equally true, obviously, that Associated is not bound if the Commission fails to approve the acquisition.

It is my understanding, from what these gentlemen have said, both here and previously, that they regard Arrow as a desirable inclusion in this unification, but not as an essential one. I am not here to argue to your Honors that you should or should not include Arrow. I am merely here to give you the facts, and you have from the record the practical operating facts, and you will decide whether or not the inclusion is desirable.

845 I do want to say just one further word in regard to the attacks which have been made on this transaction by the Department of Justice and the Department of Agriculture, apparently based primarily on the fact that Kuhn, Loeb is a participant in the proposed transaction through its ownership of the stock of The Transport Company and through The Transport Company's former contract with the stockholders of Arrow. Apparently the basis of this opposition is solely that Kuhn, Loeb and Company has done investment banking for railroads. Apparently the fear is that Kuhn, Loeb's interest in this picture is a railroad interest and that if Kuhn, Loeb is permitted to acquire the stock of Associated, which would be issued in exchange for the Arrow stock, that stock will somehow be used for the benefit of the railroads and to the detriment of Associated. There is not a single even implication in the record to support the insinua-

tion that Kuhn, Loeb is interested in this transaction from any railroad standpoint, nor is that the fact. Kuhn, Loeb's interest is solely a financial interest. They have put money into this picture, at least \$200,000, paid on account of the stock of Arrow, and quite a lot of money spent on the expenses of the audits and accounts that Mr. Horton spoke about that were purchased from the original Transport Company. They believe that the Associated stock which they would receive for the Arrow stock would in due course be worth more than they would have to pay  
846 for the Arrow stock, and that is the sole interest of Kuhn,

Loeb in this picture. They are not out to tie up their capital in permanent investments if they can help it. Their business is to buy and resell securities. They render banking service by providing the corporations' cash for their securities, and by reselling those securities. That is what they did in this case.

The Arrow stockholders were not willing to turn in their stock for stock of Associated or for stock of the earlier Transport Company. They insisted on cash. Kuhn, Loeb's function was to provide that cash. It seems too bad that that relatively accidental connection of Kuhn, Loeb almost with this case should have brought down on the heads of the proponents of this plan an attack which seems to have nothing to do with the merits of the unification as such, but only to do with the apparent—with the imagination really of somebody as to what investment bankers, may do.

Kuhn, Loeb has no desire to exercise any control over this company. If the Commission approves the unification and the inclusion of Arrow, Kuhn, Loeb will be entirely willing to accept any condition which the Commission might impose as to voting the stock which they might acquire, so long as they owned it. It could be put in a voting trust with trustees satisfactory to the Commission, as the Commission has done in some of the railroad cases where there was a question.

847 I won't attempt to suggest to your Honors details of how that could be done, but I want to say very strongly that if there is any fear in anybody's mind that Kuhn, Loeb will exercise any control for any improper purpose, we are entirely willing to accept any condition which your Honors may desire to impose. Thank you.

Act. Chairman. AITCHISON: That leaves about thirty-eight minutes left, Mr. Sullivan.

Mr. SULLIVAN. Thirty-eight?

Act. Chairman. AITCHISON. Yes.

Mr. SULLIVAN. Thank you.

Act. Chairman. AITCHISON. Mr. Thatcher wishes to speak for a moment or two. You had no time reserved, but be very brief.

848 Argument of Mr. HERBERT S. THATCHER:

Mr. THATCHER. My name is Herbert S. Thatcher, associated with Joseph A. Padway, counsel for the International Brotherhood of Teamsters. I would like to make a brief statement respecting the teamsters' position in regard to this merger.

Commr. ALDREDGE. By the way, do these drivers belong to that organization?

Mr. THATCHER. Eighty-five per cent; yes.

Commr. PATTERSON. Whom does the other fifteen per cent belong to?

Mr. THATCHER. I think they are probably unorganized. I don't know.

Mr. SULLIVAN. They are unorganized, your Honor.

Mr. THATCHER. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers has thoroughly examined and investigated this application from the viewpoint of labor. We appeared in these proceedings and cross-examined witnesses. Because of the fact that the overwhelming majority of the employees of the companies are members of our organization, and because of the expression by the company of an intention to enter into collective bargaining relationships affording protection to and conferring benefits upon our members and, finally, because of the present conditions in the country, we are satisfied in 849 this case to accept and rely on the testimony of the parties and the Examiner's findings. We are of the opinion that labor will not be adversely affected by the granting of this application but, on the contrary, will be benefitted thereby.

We, therefore, accept the good faith of Associated Transport's expressed intention to negotiate proper contracts for the protection of our members with respect to hardships that may arise in the cases of certain employees by reason of the merger. Under these circumstances, we do not ask for an order of the Commission covering such possible contingencies. We wish to withdraw our previous objections. We desire to be recorded as supporting this application.

Act. Chmn. AITCHISON. I understand Senator Shipstead and Senator O'Mahoney desire to be heard this afternoon. Mr.

Burclmore, are you ready to proceed?

850 Argument of Mr. JOHN S. BURCHMORE:

Mr. BURCHMORE. The National Industrial Traffic League for which I speak took no active part in the proceeding but had representatives present at. I think, every session or almost every session of the taking of testimony, and we filed brief and exceptions on behalf of that organization. Now, I am not appearing here for the purpose of objecting to the granting of these applica-

tions. We are appearing as a matter of principle, and I had supposed—I don't mean to comment at all on the way this has been argued—that I would not address you on a subject which had been fully and adequately described as to just what these applications were, but I think the argument so far has proceeded on the assumption that you gentlemen have all read the Examiner's report and are thoroughly familiar with the set-up. Maybe I ought to state that I understand what the set-up is, so you will know I understand it in terms of what I understand the set-up to be.

There are two applications here, one for consolidation or merger of eight companies operating some 300,000 vehicles, I believe, and as to that we apprehend that—and the other is an application for the issuance of securities by the new company which will make possible this merger and consolidation in the operation of the companies that result. The Examiner in a very voluminous report approves both applications; that is, recommends  
851 your approval of both applications, the application under Section 5 for merger, and the application under Section 214 for the issuance of preferred and common stock.

Now, the League filed three exceptions. We question the soundness and sufficiency of the findings on sheet 47 as to their adequacy to afford a full and a maturer explanation of all those features of the financial structure which may affect the public and as to their adequacy to support the second conclusion on sheet 54 that the issuance of securities should be approved. Secondly, we urge that the Examiner has not set forth correctly the contention and position of the League which he sets forth on sheet 44. We further raise the question whether the Examiner recognizes the duty and policy of the Commission as regards advertising and future market price of securities; and.

Third, we say that the Examiner correctly takes the view in the chapter on issuance of securities in the concluding chapter on sheet 50 that questions of rate-making policy should not be considered in cases under Section 5 but should be reserved for determination when they arise in subsequent rate cases. For that very reason, however—and that goes to the reason of our intervention here—for that reason, however, the greatest care should be exercised to insure that nothing will be permitted to be done in the way of consolidation or the issuance of the securities at this  
852 time which would work to the disadvantage of anyone.

The Examiner's report is at best unconvincing to the League, which desires only a thorough scrutiny and complete readjustments. I certainly am in a little delicate position here. In this respect, I am perfectly conscious that many members of



the League—and I am speaking now of an organization of shippers; not of crusaders or anything, but of shippers—many of these shippers think this is an excellent merger and that it deserves support and approval. There are others that question it. I am not going here to say something that blights this proposition if it should not be blighted, but I only want to say to you certain principles which the League wants applied in questions of merger and in issuance of securities.

COMM. MAHAFFIE. You really recommend we write a little better report; do you?

MR. BURCHMORE. I certainly do, and, Mr. Commissioner, will you subscribe to what the Examiner says in this report when he slaps the Commission on the wrist and says, "Why, now, now, why did you get in here?"

COMM. MAHAFFIE. He slaps the League, don't you mean?

MR. BURCHMORE. He slaps the League, didn't I say?

COMM. MAHAFFIE. Slaps the Commission.

MR. BURCHMORE (laughter). Oh, no.

COMM. MAHAFFIE. You would not be so excited if he had  
853 been correct; would you?

MR. BURCHMORE. I would speak better. On sheet 45 the Examiner says: "Approval of the instant transactions would not entail any finding by the Commission that the common stock proposed to be issued has a greater value than par, and, if subsequently the public wished to buy such stock at a greater price, any such purchase would be at its own risk and not in reliance upon anything this Commission had found or said." I don't think that is your expression of policy or attitude in these matters. Following: "Obviously, the Commission cannot control all future selling prices of stock, issuance of which it authorizes, and, contrary to the League's expressed fears, would not, and could not, under the law, base rates on stock quotations."

Now, let me state very briefly what I understand this financing situation to be. It is described on sheets 3 and 40 and 41 of the proposed report. They have applied here—this Delaware corporation, under the Delaware law, is authorized to issue one hundred thousand shares of common—preferred and one million shares of common. They have actually issued 1,480,000 shares of common which are outstanding and of which a part belongs  
to Mr. Seymour. This part is redeemable in the future at  
854 105. It is exchangeable in the future in the ratio of four shares of common for one of preferred. Now, four shares of \$100 common stock may be exchanged in the future for \$100 preferred, which seems to suggest the idea that somebody thinks

that somehow or other the common will have a value of \$25 a share as against preferred stock that was issued wholly for value received.

Now, sheet 6 sets forth the formula upon which these companies that are selling their properties or putting their properties into the merger are being paid. Roughly speaking, they get 80 percent of the net worth of the properties in preferred stock, and then they get common stock on a formula which relates that common stock at \$1 per common share to the earnings of the underlying companies. The formula is in there on sheet 6, and you will find in the record Mr. Seymour's statement—I believe it is on page 147 of the record—where he says that this is an excellent formula that just means the cooperative merger; that the folks that now own the property come in to the new properties on a very commendable sort of formula.

I do not ask why they have adopted this mode—I am not going to curse it weakly by calling it a device—but why have they adopted his mode of \$1 common—the Department of Justice likes to call it a “razzle-dazzle”—why have they adopted this “razzle-dazzle” by which \$1 common is going to displace \$5-preferred? In the brief I filed for the League I, unfortunately, set forth this financing a little inaccurately in that I failed to note that 200,000 of the \$1 par common stock was a duplication in the sense that it is not to be immediately issued but it is to be later reserved for issuance on this exchange basis for the preferred, so that they will either have in the end 64,000 shares of preferred and 3,000 shares of common or 8,000 of common, but they won't have both.

Commr. MAHAFFIE. Is it your position that this company is being under-capitalized?

Mr. BURCHMORE. So far as I am concerned, it is being mysteriously financed.

Commr. MAHAFFIE. It is mysterious in that, if I follow you, it is being undercapitalized. Now, that is novel.

Mr. BURCHMORE. No; that is not my point at all. I just don't want to be regarded as sitting in the middle of the Department of Agriculture and the Department of Justice in condemning this thing as a “razzle-dazzle” high finance scheme, that should be disapproved by your Honors, and I, on the other hand, don't want to be understood as endorsing the financing which we cannot understand on the record. On the admissions and in the opening brief for the applicant there isn't any description of what this financing is. There is not any citation of the record from which you can learn what it means.

I do now want to direct your attention to the situation  
856 under the Delaware law, and this corporation is a Delaware corporation. I direct your attention to that from this point of view: Here is a corporation—as to corporations generally, the policy of the United States is one of protection of the public and protection of investors through the Securities and Exchange Commission as to corporations generally, but a corporation such as this, other common carriers subject to your jurisdiction are immune from the Securities and Exchange law and regulations. This corporation is. As to railroads and motor carriers you have the same duty and privilege of protecting the public and investors generally and sound financing as regards motor carriers and railroads. Now, here is a proposal set before you for approval of the issuance of securities that involve this mode and this method that I am speaking of, which is somewhat mysterious to us, and I want to say in the light of many years' experience in some matters I have great admiration for the skill of bankers, for the skill of lawyers, for the skill of financiers, and for the skill of gentlemen like Mr. Seymour in devising financing schemes which are entirely legal, entirely in conformity with statutes, and yet which have other amazing results in the final analysis.

In the Delaware law, which I am not prepared to argue what this law means—I haven't followed it through the decisions—

but in the Delaware law there is a very peculiar status of  
857 common stock, and if you will consider that Delaware law—

and you have no opinion of counsel here as to the effect of the Delaware law in their own setup—it is perfectly possible for this matter to be manipulated in time to come so that without your approval we may find in the hands of the public common stock the public has paid \$25 a share for. Now, do you want that to occur? Now, viewing the matter, there is no warrant at all for any such capitalization of these properties except the capitalization based on the very handsome earnings they might in the future be able to realize—a financing scheme that would run contrary to your policies. What I am referring to is Section 14 of the General Law of the Corporation Law of Delaware.

It provides, among other things, that: "The amounts so fixed as capital must equal the par value." That is, must be as much as the par value, "of shares issued but may exceed that amount, and the capital may be increased at any time by transfer from surplus. Stock having a par value of \$1 may be sold or issued at any price and either \$1 or any greater amount paid in may be allocated to capital."

Consequently, the capital of the Delaware corporation is not necessarily limited to the par value of its issued stock, and there

is considerable in there that if the stock is sold for more than par value or issued for more than par value, the value for rate-making purposes, if it is at all to be distinguished from valuation as distinguished from value of property, it might be any amount, and I say that the object is to have some common stock be authorized at \$1 and in the future not be issued at \$1 a share by the corporation but will be issued on a ratio of preferred which sells \$25 a share for the first three years. I think it is \$30 the next three, and \$35 the next three years. Now, don't ask me to analyze or explain that, but it does not seem that there must be a reason, not explained.

Now, we of the League—it is a part of our platform in these matters, we do not wish to see financing of motor carriers on any other basis than you apply to railroads, a financing that means in time to come the public owns stock which represents a large cost to the public and on which the corporation cannot produce earnings.

COMMR. MAHAFFIE. Can you suggest any way that if stock becomes available for public purchase the public can be prohibited from paying any price it wants to for it?

MR. BURCHMORE. I suppose not, but if you are satisfied—with the little warning I am giving here, if you are satisfied with the set-up, and if you are satisfied with the Examiner's view of the matter, I am perfectly satisfied.

ACT. CHRMN. AITCHISON. Is the League seriously concerned in this situation with the fact that the Commission will interfere with the market value of the stocks and bonds?

859 MR. BURCHMORE. That you are or will?

ACT. CHRMN. AITCHISON. That we are.

MR. BURCHMORE. I don't think you are, no; and I say that if in deciding this your decision is such that you will make it very clear that all questions of policy, not only as regards rate cases, shall be reserved for rate cases when they arise with no estoppel or anything else from the facts of the decision in this case, why, the League is satisfied.

ACT. CHRMN. AITCHISON. Doesn't the law impose that restriction?

MR. BURCHMORE. Sometimes the law is interpreted differently than we see it, but I think so; yes.

ACT. CHRMN. AITCHISON. Suppose we were to put that in. Would it have any great efficacy as against a subsequent change of the law than the gold clause did, for instance?

MR. BURCHMORE. Well, I think your Honor can answer that better than I can.

ACT. CHRMN. AITCHISON. Well, what are you worrying about, Mr. Burchmore?

Mr. BURCHMORE. I think maybe what we may have worried our members about were the complications and the rumors and the things that have been going on off the record.

Act. Chrmn. AITCHISON. You are too old a practitioner to pay any attention to that, aren't you?

Mr. BURCHMORE. Sir?

860. Act. Chrmn. AITCHISON. I say, you are too old a practitioner to pay attention to rumors and backyard gossip; aren't you?

Mr. BURCHMORE. I ought to be.

Act. Chrmn. AITCHISON. I do not know what you are referring to. It has not reached us here that we know anything about.

Mr. BURCHMORE. This is a second attempt of the merger that you struck down in the Transport case which preceded this one and which has been mentioned in the earlier arguments. In that matter we came here seriously objecting to the set-up which meant something like a seventeen million dollar capitalization, and so forth, that would grow out of the proposition then set forth. You condemned it for reasons which met with our approval, which meet with our approval today. You seemed very closely to follow in form and in pattern that very proposition. It spelled and had the possibility inherent in it of the same results which you yourselves condemned in that proceeding, and we, therefore, were prompted in protection of those principles to participate in this case as we did in that one.

I am here to voice a warning about this thing, that it seems to us there are possibilities in this finance hearing that require settlement, that require definition, that require an opinion of counsel to you as to the effect of the Delaware statute and the future  
861 financing, and in our precluding part from you—

Commr. MAHAFFIE. We could probably get that directly from about 25 percent of the members of the National Industrial Traffic League, some of whom are Delaware corporations; aren't they?

Mr. BURCHMORE. I happen to be counsel for some of them, and I doubt whether you should issue an order carte blanche of approval of this financing on this record as made and with the conditions that you are adhering to and no such provision that the present ownership shall retain their stock or the present officers shall continue in effect. That is in the Commission's order, and you can permit issuance of securities but you cannot go beyond the provision of the law and say that there be no further transfers.

Commr. MAHAFFIE. Do you suggest we should seek to recognize corporations incorporated under the laws of Delaware on account of these vague areas in charter rights?



Mr. BURCHMORE. No; but always decide cases on the basis of the security itself and the corporation that issues it. In these motor rate cases they are now progressing, and in the discussions, in articles and periodicals and speeches about the duties of the motor carrier industry, and so forth, we have very sharp distinctions about it as between the motor carrier industry as a service industry, as to the rate of return, the earnings, and so forth, 862 as to the low rate of investment, and so forth. I am not so sure that you have clearly established the analogy or the distinction for rate-making purposes, so we are perfectly sure, and, remembering in the past the arguments with regard to watered stock of railroads, a corporation with a large outstanding capitalization recorded on its books as distinguished from mere market values on the ticker is not entitled to some consideration, and certainly it will have that consideration in the mind of the financing public.

If a corporation has stock which shows on its balance sheet is worth \$15,000,000, that is quite a difference if it has stock on its books of \$5,000,000 but a market value of \$15,000,000. We think financing will be considerably more difficult for motor carriers if there is a lack of earning upon the book of recorded capital as they have recorded it. In this particular set-up, it seems to me that the form of the application under the Delaware law might well result, without any further order from you, in this common stock being shown on its books as capital at the tune of \$25 or more per share which, on 800,000 shares, would be how many million dollars?

Commr. MAHAFFIE. Have you found any way that could be accomplished under the regulations of the Motor Carrier Act without approval of this Commission?

Mr. BURCHMORE. I have not been able to determine that where the corporate law covering that carrier expressly permits 863 the stock to have a stated value other than its initial value. This is a peculiar situation.

Commr. MAHAFFIE. Have you checked our classification in that regard, Mr. Burchmore?

Mr. BURCHMORE. No; I have not. I am not competent here to advise you of the answer, but only to suggest the question.

Act. Chrmn. ARCHISON. Mr. Donoho.

Mr. DONOHO. Mr. Chairman, the Department of Justice indicated to me that they would like to go next.

Act. Chrmn. ARCHISON. Oh, yes.

Mr. DONOHO. I thought they had indicated to you also.

Act. Chrmn. ARCHISON. Yes. All right, Mr. Arnold.

## Argument of Mr. THURMAN ARNOLD:

Mr. ARNOLD. When does the Commission rise for lunch?  
Act. Chmn. AITCHISON. 12:30.

Mr. ARNOLD. At the outset, if the Commission please, I desire to state that the intervention of the Anti-Trust Division is in a spirit of cooperation with the Commission in carrying out the will and purpose of Congress. The Anti-Trust Division happens to be the only organization in Government particularly charged with the investigation of complaints with respects to restraints of trade. We attempt to present cases of undue restraints of trade before every appropriate agency of the Government. For example, our Small Business Section investigates and informs other agencies of the Government of cases where small businessmen are injured by application of policies through the defense agency, and it is in the same spirit that we present to this Commission our views on this case, which involves the Anti-Monopoly policy of the Interstate Commerce Act. Our appearance in this case is the result of numerous complaints and representations by representatives of responsible groups—

Commr. MAHAFFIE. Are those complaints a part of this record?

Mr. ARNOLD. A few of them are. Not all of them are. For instance, on January 22 Edward O'Neill wrote a letter to this Commission on behalf of the American Farm Bureau  
865 Federation, and the others are simply in our office, and

I don't know that it is important other than the fact that we come here on the basis of such complaints, and the complaints are that this consolidation is going to have very far-reaching consequences in establishing a pattern of the development of the transportation system dominated and controlled by a few, small private groups.

Now, a glance at the map is sufficient to show that these complaints have substantial foundation. There is no question, if the Commission please, about the future power of that proposed combination. There is no question about its strategic position. It is admitted that it eliminates competing lines. It is larger by ten times than any other motor carrier operating in that territory and by two and a half times than any other motor carrier in the United States. It rests, as I see it, only on two justifications, so far as the Examiner's report is concerned.

First, because the managers of this merger promise future economies and conveniences of a little more than a million dollars, and, further, they assure the Examiner that they would not think of using the vast power granted to them in any way that would not be fair to competitors. They are not going to swat their

competitors like flies. They are going to treat them just as nice rabbits deserve.

866 Second, because of the Examiner's prediction there will still remain enough competition to prevent the merger from becoming a complete monopoly.

Now, in my own argument I wish to say that the tests laid down by the Examiner are contrary to the fundamental principles of the Transportation Act, and my colleague, Mr. Wiprud, will attempt to analyze the Examiner's report.

The simple question presented here is whether the dominant concerns in motor carrier transportation along the entire Atlantic seaboard can merge in such a way as to eliminate a large part of present competition because they are able to present a blueprint confidently promising future economies to come from that elimination of competition, in the absence of a showing that the public is now suffering from inadequate transportation service. If that question is answered in favor of the merger, I assert that a pattern will have been established which will mean the end of competitive transportation on the public highways.

The reason that result is inevitable does not lie in the lack of good faith or experience of the Examiner in guessing whether the economies indicated by these blueprints of the future will be carried out or not. It lies in the kind of judgment as to future conditions which such a test compels the Examiner or this Commission to make.

Broadly speaking, I think there are two ways of approaching the problem of merger or pooling of motor carrier systems 867 or services. The first is to examine existing conditions to see whether the public is getting adequate service. It is the duty of this Commission to insure adequate transportation service. If present transportation service is clearly inadequate, it becomes the duty of this Commission to approve such mergers or such pools or such agreements as will remedy the evil, taking, I think, always the lesser step; that is, the least step which will remedy that evil.

Act. CHRMN. ARCHISON. Isn't it our duty to go a little further than that? Isn't it our duty to get better service even if that service is adequate?

Mr. ARNOLD. Well, I might put it this way: With respect to the situation that can be changed, the step which is not irrevocable, and that is the pooling or the agreements. The Act says, "Economies in operation, and shall not unduly restrict competition." That is with respect to a service that is not irrevocable. With respect to the merger, the Act says, "only adequate service," and that is the only phrase that is used.

Now, these judgments are not defined by sharp tests. They may be loose or exacting according to the standards set up. They are, however, safeguarded by the fact that the Commission is dealing with present existing facts which can be examined. In other words, you are looking at an existing situation. Evidence 868 can be taken as to who is suffering from lack of adequate service and why. Remedies which involve some restraint on competition can be limited to curing the specific evil found, and the Commission can be given as a guide post the injunction that it shall permit no unnecessary or undue restraint on competition. Now, the idea behind this approach is the hope that future betterment, outside of correcting future circumstances, future development, will come from private initiative in a competitive system. All the Commission, I think, need concern itself about is to see that the public does not suffer from lack of adequate service while that competitive race is going on. That, I assert, is the spirit and the principle of the Transportation Act. At least, I submit it as one approach.

Now, let me contrast the other approach. Well, may I say this: that this, I think, is the principle that Congress intended, I think, is made more clear by the fact that they repealed the so-called guaranty provision of the Transportation Act. I was interested to note that the entire tenor of the arguments this morning were based on the theory that somebody ought to be guaranteed some earnings. You recall the mortgage on someone's home, the effect of inheritance taxes, the future of someone else's family. Well, those were simply the byproducts of that central idea, that by making earnings show you will improve transportation, and that idea is essentially a car tail idea, and I think that.

869 Now, the principle of Congress is made more abundantly clear by the guaranty of that provision.

Now, the second approach, the one adopted by the Examiner in this case, is to weigh the advantages of existing competition against a blueprint presented by the very men interested in removing competition, promising that future betterment of service will come faster through merger than through competition. This blueprint, as in this case, always leaves some competition existing as a sort of bow toward the competitive ideal. It always affirms that the man who dominates the merger has the most kindly and benevolent intentions toward competition. For instance, they have no intentions, as they assured this Commission, for any future mergers. Then, if they get into too much power the Commission can wave a wand and another organization capable of competing with that system will be organized. It works out perfectly.

Act. Chrmn. AITCHISON. We will suspend until two o'clock.  
(Whereupon, at 12:30 o'clock, p. m., a recess was taken until  
2:00 o'clock, of the same day.)

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AFTERNOON SESSION—2:00 P. M.

Act. Chrmn. AITCHISON. You may proceed.

Mr. ARNOLD. May it please the Commission, before the recess the Chairman asked me a question which involved the difference between the pooling section, which is not an irrevocable change, and the merger section, which is an irrevocable change.

I do not want to labor in that connection the exact meaning of these words—the exact meaning of “economic benefit,” the exact meaning of “economies in operation,” or the exact meaning of “adequate,” because these words are not capable of being put in a strait-jacket. They only wanted to indicate that the difference between those two sections is a very real basis—the irrevocability of the merger; the nonirrevocability of the agreement—and also to indicate that the interpretation you give those words in this statute depends entirely upon your approach to this problem of undue restraint of competition.

And, therefore, continuing in a way to answer that question on a broader scale, let me briefly review what I said to be the two approaches. One approach is to examine existing conditions in the service and to see how they may be remedied, limited by the existing conditions, at least in your view. The other is the approach taken by the Examiner, which is to weigh the promises of a blueprint advanced by the people who have an interest in putting the mergers across against the statement that that blueprint will not work out as it is claimed. That view puts the Examiner in the position of a man who speculates on the future of a new enterprise. If the men dominating that enterprise are respectable and experienced, it is impossible to prove that they are not going to do what they say they are going to do. And thus is a pattern, we claim, created which means the end of competitive transportation.

And that is one of the reasons why we are here. We wish to get the maximum cooperation between this body and the Anti-Trust Division, which deals with similar problems. As this Commission knows, at your suggestion we are bringing Anti-Trust proceedings in a case against carriers, which is beyond the scope of the Interstate Commerce Act, that is, beyond the relief of the Interstate Commerce Act. We do not wish to have a conflict of policy on the sections which are within our province to prosecute and the decisions of the Commission. It is, therefore, I think, important that in the occasional case that appears to involve great



questions of public policy, as this one does, that we at least present our views so that we may avoid conflicting views on similar problems. We have developed and we do develop concepts in the suits,

and we think those concepts are important. We do not  
872 think that we should be here in every suit, of course. We think that we should only be here where in the interest of cooperation we can avoid those conflicting concepts.

In this case where we are weighing a blueprint we get the type of test which I think inevitably leads to monopoly. For instance, what is the only answer that we can make to the brave promises which we heard this morning and which are reflected in the record? The only thing we can say is that we do not believe that these men are going to accomplish these things. Whereupon it draws the challenge either against their integrity or against their ability, because anybody can put on paper a merger which will cure all existing evils.

The futility and the inconclusiveness of that test, I think, is very apparent from the reply brief. The Antitrust Division argues that the history of the growth of monopolies shows that the proposed combination, involving as it does elimination of competition, will injure the public interest. The reply brief calls it "a storm of vilification and abuse unprecedented in their business experience." Well, it is interesting to read that brief. I do not criticize it. It is the only kind of argument you can make.

Act. CHAMP. ARCHISON. The Division dealt with this problem in its brief, didn't it?

Mr. ARNOLD. Exactly. In other words, one side says he will, and the other side says he won't, and that is the type of argument which leads to apoplexy.

873 I simply point out that inevitable result of weighing a blueprint, instead of starting out with the existing conditions, and I assert that by this approach, this examination of prophecies as the starting point—I claim no iron-clad meaning for the words "adequate service," but I simply say that by this approach power is given to private groups to get into strategic positions to dominate an entire transportation system on the faith of their representations of intent, and after the merger is made the only safeguard is some sort of breach of promise action on the part of this Commission, and this, I think, is only the power to lock the stable door after the horse is gone. The strategic position which this approach gives to private groups is beautifully illustrated in this record. It seems to me that the principal contribution to adequate service or better service in this case is the establishment of a through trailer service to New York. The Examiner admits that it can be accomplished by agreements, but

he says the applicants are reluctant to improve their service by any such simple remedy, and therefore they come before the Commission and assert that they are not willing to enter into an agreement, and for that reason they will conduct sort of a sit-down strike; they will not improve their service unless you grant them this merger; that is, the reluctance to cooperate, or the difficulties which they create in pooling equipment, is the reason 874 why they should be given the right to dominate the Atlantic seaboard.

Now, I only assert that it is not the purpose of Congress to determine the limits of competition by weighing opposing prophecies as to whether betterment of service would come faster through merger than through competition.

Congress has said that the future development of the transportation industry must come through competition and not through guesses as to the future fulfillment of promises by men who have an interest in making them. It has given the Commission the power to eliminate such competition as deprives the public of present adequate services; but it has directed the Commission in exercising that power to see that the motor-carrier transportation remains competitive in an operator and not in a token sense.

Now, may I briefly outline these somewhat loose general principles, which I think make a tremendous difference in the results of the case, regardless of the fact that none of them can be strait-jackets. What are they? Well, negatively stated, they are as follows:

In the first place, the Interstate Commerce Act, I do not believe, is an attempt to protect carriers against competition.

Second, it is not a legislative plan to promote regulated monopoly.

Third, it is not an act to encourage the merger of motor services into a vast system, where adequate transportation 875 facilities can be maintained without that merger.

Putting this principle in a positive form, I will say that the Transportation Act directs this Commission to use its power of approval of pooling arrangements or mergers in the light of the spirit and principle provided in the Sherman Act, applied to the peculiar problem of transportation in which this Commission is expert. In effect, the Interstate Commerce Act has transferred the power and duty to enforce the principles of the antitrust laws from the Federal Courts to this Commission.

In other words, on these questions of judgment involved in the unreasonableness of the restraint, the undue nature of the restraint, instead of having 96 Federal districts, which could arrive at different judgments, you have that power exclusively vested in the

Commission to decide for the entire transportation system of the country those questions which do rest on skill and discretion and judgment. But I assert that the principle to be applied by the Commission is precisely the same under undue restraints of competition as it was under unreasonable restraints of competition.

The justification for empowering this Commission to enforce the principles of the Sherman Act with respect to transportation is obvious. It is expert in the determination of the specialized problem of transportation. Transportation above all things becomes chaotic without some control. Therefore, it was thought appropriate to transfer this thing to a single expert body.

Now, in the Appalachian Coals case, which, as this Commission knows, is the case which roughly represents a combination for the interests of economic benefits or better service under the antitrust laws, I think you have the same principles, which can be applied by this Commission. A marketing agency was there approved in order to stabilize on a limited scale the marketing of coal. The economic betterment of the parties was one of the reasons for the combination, and in approving it the Court relied upon two factors:

First, the chaotic condition of the coal industry;

Second, the fact that the marketing agency was not of sufficient size to dominate the entire market, the entire national market, or any principal part of it.

And these two principles I think are fundamental to the interpretation of the Transportation Act. Adequate service must be maintained; competition must not be eliminated beyond that point.

Economies in operation may be approved, but not at a price which involves undue restraints of competition. The Commission's action must be consistent with the public interest, but this does not mean that the Commission is empowered to determine that regulated monopoly is in the public interest; it means that the interests of the public are paramount to the interests of private groups.

The Act does not make "economy in operation" a consideration for the approval of a merger. Now, that is not conclusive, but it is a straw which shows the way I think Congress intended it. That phrase is found only in the section applying to an arrangement which is not final, which can be broken down if it does not work, to wit, agreements or pooling. Only the imperative necessity of providing "adequate transportation service" will justify the final and irrevocable step of the merger of a number of companies into one. In other words, economies in operation might well justify the Commission in the approval in this case of

an exchange, or agreement to exchange, equipment for through service to New York. It does not permit the companies to decline to put these economies into operation by agreement and then urge that the impossibility of getting together on such an agreement is a ground for justifying the irrevocable step of creating a merger which dominates the Atlantic seaboard. This I think is the only interpretation possible under the direction of Congress that the Commission apply the great competitive tradition of the Sherman Act to transportation.

Now, I am frank to admit that we get nowhere by seeking for precise definitions of these words along the lines of the interpretation of a tax statute. These phrases, "consistent with the public interest," "unduly restrain" competition," 878 "adequate transportation service," construed in the light of a non-competitive tradition, are the very tools by which a cartel system may be set up. Taken by themselves, without consideration of national policy, they are deuces wild. They will fill any hand. The result depends on what you are drawing for. The accuracy of this statement I think can be shown by examining the decisions of the cartel courts which destroyed the competitive system in Germany and which finally, at the close of the Weimar Republic, created such disparity of prices between agriculture and industry that agricultural products, though scarce, sold at ruinously low prices, and industrial products, though plentiful, could not be exchanged.

Now, Germany prior to the war represented the ideal of non-competitive cartels. It used the identical words in establishing that system that we find in the Transportation Act, excepting that it impressed them with different tradition.

Now, I do not wish to intimate that the applicants or the Examiner have any sympathy or connection with the Germans. I use the German illustration only because out of the German cartel courts comes the best example of cartel reasoning. If we take a typical cartel decision, we will find it following practically the same lines as the Examiner's report. The way that the Trial Examiner has gone has been the way of the cartel court, and his 879 decision could well have been handed down in Germany during any year from 1926 until shortly before the war.

It starts out with the notion that he is convinced that better service will come from the merger than without it. He then looks to see if any substantial competition is left. Having thus protected himself against the monopoly, he allows the merger to proceed on the promise of the applicants not to abuse their power.

Commr. MAHAFFIE. Did the cartel system extend to motor transportation? Were there motor carriers put into cartels?

Mr. ARNOLD. The cartel system was, you might say, a name which applied after the thing had happened. In other words, it was a name which was given to a society which was dominated by these combinations.

Now, of course, there is this difference, that in Germany there was not the need for merger since agreements were treated the same as the Examiner has treated the merger.

But I wish to read from Mr. Justice Hughes' opinion in the Appalachian Coals case, because it shows that we make no distinction between mergers and agreements. Mr. Justice Hughes said:

"The argument that integration may be considered a normal expansion of business, while a combination of independent producers in a common selling agency should be treated as abnormal—that one is a legitimate enterprise and the other is not—makes but an artificial distinction. The Anti-Trust Act aims at sub-  
880 stance. Nothing in theory or experience indicates that the selection of a common selling agency to represent a number of producers should be deemed to be more abnormal than the formation of a huge corporation bringing various independent units into one ownership. Either may be prompted by business exigencies, and the statute gives to neither a special privilege. The question in either case is whether there is an unreasonable restraint of trade or any attempt to monopolize. If there is, the combination cannot escape because it has chosen corporate form; and, if there is not, it is not to be condemned because of the absence of corporate integration."

So I think that there is not much difference in the fact that the cartel decisions refer to cartel combinations and this is a merger.

Now, a fundamental cartel principle was that free competition should be maintained as far as it was consistent with the public interest in the supposed superior efficiency of the cartel combination. For example, on December 21, 1935, the German court decided that the combination of different enterprises was in this sort of public interest. Nevertheless, under the cartel system substantial competition had to be maintained. So the court granted a compulsory license to avoid the destruction of one of the plants in the industry. In other words, the court was trying to promote

the great principle of unification and also preserve substantial competition, just as the Examiner said in his report.  
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The cartel court continuously in many cases decided that the danger of destruction of free competition was a good cause for the cancellation of cartel obligations. For example, on November 19, 1935, the cartel court held that "the public interest and common welfare" required the continued existence of an independent competing manufacturer of dental equipment, and in its



decision the cartel court said: "Free competition shall be protected for the German good and shall not be hampered so long as it is based on reasonable conditions."

In another case, on September 13, 1935, the German cartel court compelled an independent window glass manufacturer to join the cartel under the following language: "The aim of any market regulation is to keep alive as many enterprises as possible. Enterprises such as the defendant endanger this aim very much by using the price policy which may be justifiable for one of the other enterprises but cannot be justified in consideration of the common welfare."

Now, these are typical. It runs through all the cartel decisions which reached that result.

It is a common error that the cartel system in theory opposes free competition. The cartel system always attempts to provide for substantial competition. It always attempts to guard against monopoly. It never desires to restrain trade unduly. It  
882 creates monopoly actually, not because of any bad intentions, but because of the nature of the test, the test being always the promise of the proof which comes in and offers these benefits which cannot be weighed against any existing standard. Instead of putting their feet on the ground and seeing what limited remedies are required in the present, they look into the future. As Mr. Seymour said, he is not a promoter, but he did a very good job of promoting the idea of the future efficiency of this scheme. If you express disbelief, you irritate the most prominent men in the industry, as we have done in this case; and if they come back at us, they irritate us, and we come to the kind of argument in which the prominent and experienced men always win, because only the respectable and prominent men in an industry ever propose a cartel.

That is the history and the attitude of the cartel system, and I think it is emphatically not the test laid down by Congress.

COMM. MAHAFFIE. Mr. Attorney General, in discussing the competitive situation do you include competition by other forms of transportation than common carriers by motor?

MR. ARNOLD. I would say that in the expert opinion of this Commission certainly all forms of competition should be considered. I do not come here to advise the Commission on transportation problems. I only come here because I think the  
883 principles on which this merger would be approved on the present record would lead directly to the cartel system.

I do not come here saying that it is not necessary to have end-to-end combinations. I only come here saying that the attitude should first be an examination of the present adequacy of transportation; a natural reluctance to change that unless con-

ditions imperatively require it, wherever it involved elimination of competition; as it is admitted in this case; and, finally, that in approaching the problem of remedying those situations, the lesser remedy, the one which does not create an irrevocable change in the industry, to wit, the pooling should be resorted to before the irrevocable step is taken. And I say that this record is a record which sweeps all those protective attitudes aside and permits these very words in the statute "substantial competition" to result in what I think will be the complete domination of the motor carrier industry.

Commr. LEE. Do you take into consideration the fact that the Commission has power to issue certificates to operate over the same highways?

Mr. ARNOLD. I regard that, of course, as in the nature of weighing—I mean I think it can be taken into consideration, but I regard that as in the nature of weighing a promise of what a future Commission will do, whether it would order a breach of promise action against this merger, and I think experience has shown  
884 that it is pretty ineffective. What chance, I submit, has the new combination got to form and grow and suddenly break into that transportation system? I simply submit it never happened in Germany. As you know, Germany issued, instead of certificates of convenience and necessity, compulsory licenses to do business—the same idea, and once established your compulsory license does not create competition. It might have a chance, but the water is under the dam. And the chances seem to be so remote that that prophecy cannot be weighed against the other prophecy, I think it is the most convenient, psychological escape, and it is used in this case by someone who comes and proposes this merger. They say, "We are great and good men. We are men of experience. We won't go wrong. If we do, you just get somebody else to come in here and compete with us, against our opposition," because, remember, if they go wrong, and you get someone in here to compete with them, their opposition will become very real, and you will have the same thing all over again.

Commr. ALLDREDGE. I presume you feel that it should not be a perfect consolidation; that there should be some ragged edges to a thing like that.

Mr. ARNOLD. Oh, of course. There is no absolute monopoly in the world. There was not in Germany. There is not in this country.

I find that I have taken up all my colleague's time and so I submit—

885 Act. Chmn. ARCHISON. Mr. Attorney General, if you want to comment upon the general line of cases in which

the Commission has held in the past that it had no duty to enforce the provision of the Anti-Trust Act, you may do so.

Mr. ARNOLD. I do not think the Commission has such a duty. I am only suggesting that the Commission is given the power and is delegated with the power to enforce the principles of the Sherman Anti-Trust Laws; that if some Court had decided in the west that a certain merger under the Anti-Trust Laws was not a reasonable restraint of trade, it would not bind the Commission.

Act. CHRMN. AITCHISON. Then the other question I wanted to ask was whether or not you think there is any analogy between the Sherman Anti-Trust Act and the acts relating to tariffs, because I call your attention to the fact that the Supreme Court has held that this Commission had no duty to aid in the enforcement of the policy of Congress with respect to tariffs.

Mr. ARNOLD. I do not think it has any duty to aid in enforcing the various acts, the Sherman Anti-Trust Act, the Clayton Act, and all the rest; but I say from the Anti-Trust Act has been bodily lifted the very phrase which the Court finally reached as a final interpretation, that is, "undue restraints of competition." The

only difference is between "undue" and "unreasonable," and  
886 you now are enforcing that phrase instead of the Courts.

The intricacies of the Sherman Act are for us to enforce in the Federal Courts. But I am only saying that you have been given control and direction of this great tradition.

Act. CHRMN. AITCHISON. I have not had occasion to look into this myself before, but I had the impression that this "undue restraint of competition" phrase in Section 5, paragraph 2, I think it is, relates to a case where one of the carriers is a railroad.

Mr. ARNOLD. Yes; your Honor. In other words, the pooling act says that, consistent with the public interest, the Court may permit a merger, having in mind two other things, but this is the only important one, "adequate transportation"; and then with the railroad it puts in "undue restraint of trade."

Now, I do not claim that the argument cannot be made that Congress intended that merger should go forward because of that ellipsis. I do not know how you would explain "adequate transportation" under that theory. But I do not think that we get anywhere by trying to torture these loose phrases. I think that my interpretation of "consistent with the public interest," which the Commission has already held involves adherence to the competitive theory, plus the starting point "adequate transportation,"

achieves the result of making the Commission slower to op-  
887 pose a merger than a pooling. And I maintain that is reasonable, because the merger is irrevocable and the pool is not irrevocable. But I am not standing before this Commission,

particularly in view of what the cartel court did with these words, saying that these words, apart from the tradition, compel you to do anything. They are just not that kind of words. No anti-monopoly statute—and they have been passed since Corinth—no anti-monopoly statute ever did succeed in pinning anyone down to the strait jacket of any words.

Mr. WIPRUD. May I inquire how much time I have, Mr. Chairman?

Act. CHRMN. AITCHISON. About twenty-six minutes. You have until three o'clock.

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Argument of Mr. ARNE C. WIPRUD:

Mr. WIPRUD. If the Commission please, this is a proceeding under Section 5 of the Interstate Commerce Act, wherein Commission approval is sought for the merger of eight common carriers of property by motor vehicle, presently operating in 19 states and the District of Columbia, into one carrier, which then would have operating rights extending from northern New York, northern Massachusetts, along the Atlantic seaboard, to Pensacola, Florida, and to New Orleans, Louisiana.

The only map showing these routes that was introduced by applicant was attached to the application. Inasmuch as this map only shows the main routes operated by these carriers, the Anti-Trust Division undertook the preparation of a more detailed map, which is Intervener's Exhibit No. 21. That map is a composite routes map, showing the routes here proposed.

Now, the record discloses that the regular route operation of the carriers parties to this merger presently extends over 37,844 highway miles. Merged, as shown on this exhibit, it would extend over 24,338 highway miles. Therefore, the effect of the merger itself would be to eliminate some 13,546 miles of parallel or duplicate routes, between two or more presently independent competing carriers.

The operating revenues of these carriers for the year 1940 was \$12,705,000, and for the year 1941, \$24,275,000. That is actual to April 30, and the balance estimated.

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Now, the distribution of these 13,546 duplicate or parallel routes is very significant. Substantially all of the operations of Consolidated Motor Lines are paralleled by one or more carriers parties to the merger. 75 percent of the operations of Consolidated Motor Lines lies in the territory of Massachusetts, Connecticut, and Rhode Island, the New England territory, and those operations are paralleled 95 percent by those of McCarthy Freight System.

Commr. ALLDREDGE. I did not get the name:

**Mr. WILFRED. McCarthy Freight System.**

The Western, or New York, Pennsylvania, and New Jersey operations of Consolidated, which constitute the other 55 percent, are paralleled 100 percent by those of the M. Moran Transportation Company, and these operations are likewise highly competitive.

Consolidated parallels Horton Motor Lines and Barnwell Brothers between New York and Philadelphia, and these lines are highly competitive.

Horton Motor Lines, which is one of the largest carriers in the merger, parallels a number of carriers parties to the merger.

Between New York and Philadelphia, in addition to Consolidated Motor Lines and Southeastern Motor Lines, Horton is in competition with Barnwell and with the last two companies, that is, Southeastern and Barnwell, between those points 890 and Baltimore, Maryland, and Washington, D. C. Horton's competition with Barnwell, however, extends into the deep south, and those operations parallel Barnwell's operations 95 percent, and the record discloses that they are very highly competitive.

Between Atlanta, Georgia, and Charlotte, North Carolina, Horton is competitive with Transportation; and the routes of the Arrow Carrier Corporation in eastern Pennsylvania parallel those of Horton, Moran, Consolidated, and Barnwell, in part. Arrow is the largest company operating in this particular territory.

Now, it is clear from this brief presentation of the distribution of these parallel routes that what is here involved is not an end-to-end unification of complementary operations, as the Examiner would have the Commission find, but the component parts of two competing motor-carrier systems, insofar as the major portion of the territory is concerned, one blanketing the other, which it is proposed be welded into one huge carrier, which would then become the largest carrier of its kind in the United States.

Now, the principal point of difference between the Examiner and the Division in regard to restraint of competition is that the Examiner deals with motor-carrier operations in the territory of the individual carriers concerned insofar as the operations 891 of those individual carriers are concerned, while the Division's view is that the test is: What competition would remain for the huge motor carrier here proposed to be created, extending from the Canadian border to the Gulf of Mexico?

Now, my time will not permit a detailed review of the evidence—and I would like very much to discuss an added element of restraint in this case, which has not been touched upon thus far—but briefly to summarize the evidence:



It shows that there is presently no motor carrier operating in this territory between the northern and the southern termini of the carrier here proposed to be created;

Further, that in connection with the long-haul traffic between the metropolitan area of New York and the Carolinas and Georgia there is no motor carrier of comparable size to either Horton or Barnwell; and the same dominant position exists in connection with short-haul traffic in New England—there is no motor carrier of comparable size to Consolidated or McCarthy; and the same is true with respect to the M. Moran Transportation Company in the New York area.

Finally, the record discloses that these eight carriers, six of which are the most prosperous, the best money makers in the business, if formed into one single carrier, would be ten times greater than any other carrier presently operating throughout the territory.

Now, the question might very reasonably arise whether  
892 or not out of the admittedly numerous local operations, and some regional operations, if a competitive system could not be created for the huge carrier here proposed to be formed. I think the record is to the contrary, and I think that the answer of Mr. Seymour to Commissioner Lee was very illuminating.

As we recorded that inquiry, Commissioner Lee inquired:

"And are there not many other people down there who are anxious to get into the business?"

And the answer of Mr. Seymour, as we recorded it, was:

"Big trucking companies, able to compete with applicant, are not built overnight. Nor can this Commission wave a wand and make one appear."

But I think that, perhaps the basic reason for the impossibility of creating a competing system to the carrier here proposed lies largely in the present relationship of the other carriers that have been left out of the merger, that is, carriers that operate regionally. We find that many of these carriers are owned by railroads. Take, for instance, the New England Transportation Company; they are owned by the New Haven Railroad. The Buffalo Storage and Delivery Company is owned by the Pennsylvania Railroad. The C. and B. Transit Company is also owned by that railroad. The United States Trucking Corporation is affiliated with several railroads. And then we find that the Seaboard Freight  
893 Lines, Inc., supplies the eastern connection for the east and west operations of the Keeshin Lines, being a wholly owned subsidiary of that company. Liberty Forwarding and Distributing Company is affiliated with Acme Fast Freight. Motor Express and Niagara Motor Express are affiliated with U. S. Freight Lines of Delaware. And so forth and so on.

There is nothing in this record to indicate such a possibility, and we submit that perhaps the characterization of Mr. Seymour is the best answer to such an idea.

Now, the Examiner makes a number of comparisons in the report, which I believe I should spend just a little time on. It is rather difficult to follow some of these comparisons from the standpoint of the relevancy to any issue in this proceeding.

For instance, he takes the operations of all the Class I carriers in the New England area, taking the six states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, forty million dollars, and he would have the Commission compare that with the operations of Consolidated and McCarthy of some \$6,400,000. There is no pretense that these are competitive carriers. He just takes these Class I carriers in six states and compares them with the operations of McCarthy and Consolidated in three states. A similar comparison is made for the so-called Middle Atlantic region, and also for the southern region.

We find in the southern region that there are added the 894 states of Kentucky and Florida. There are no operations involved here that would extend into Kentucky, and the only operation that enters Florida is that of Transportation into Pensacola, a very short distance.

We submit that such comparisons are incompetent in so far as testing any theory of competition is concerned.

There are some other comparisons; however, that may be considered from the standpoint of existing operations of other carriers in other territories. The Examiner, in support of his theory that monopoly would not result from the establishment of this proposed carrier, takes Interstate, Keeshin, and United States Truck lines, pointing out that monopoly has not resulted from the operations of those lines in the territories that they serve. We submit that on this record if you combined those three carriers, Interstate, United States Truck Lines, and Keeshin, then you would have an operation comparable to that here proposed; or, conversely, if you left Horton or Barnwell out of this merger, and one of the carriers in the north, then you would have an operation comparable to either of those three carriers.

Now, we find here that two of the largest New York to Georgia and the Carolinas carriers are involved in this merger. Horton and Barnwell, and they are presently strong competing carriers; they form the backbone of this merger. If either of these two carriers had been left out of the merger, as well as either Consolidated or McCarthy in the north, there would have been a 895 nucleus around which to form a strong competing operation to the carriers that would then be in the merger. Thus there

would have been two truly end-to-end competing unifications. To insure that no such competitor could be formed, these carriers parties to the merger, together with Moran, by contract, have conditioned the consummation of the merger upon the inclusion therein of all these competing carriers.

Now, we submit that there is here sought and there would be obtained an unshakable hold on the long-haul motor carrier traffic in this territory, not only because of the extensive route coverage, but because of the tremendous drawing power of the carriers here involved.

Commr. MAHAFFIE. Does that contract cover Arrow's inclusion?

Mr. WIPRUD. It does not, Mr. Mahaffie. It includes Barnwell—

Commr. MAHAFFIE. Isn't it one of the competing carriers?

Mr. WIPRUD. They claim they are not competitors. They claim that they merely parallel these routes but that they are not in fact competitive.

Commr. MAHAFFIE. Do you agree with them on that?

Mr. WIPRUD. I do not, sir.

In the reply brief the applicant cites two motor carriers which they claim would be competitive with this operation from  
896 Boston to the deep south, Akers Motor Lines and Carolina Freight Carrier Corporation. Akers, as the Examiner states, is an irregular route operator with a gross annual volume of some \$911,000, and Carolina Freight Carriers with some \$385,000.

Now, referring back for just a moment, if I may, to the competition between the carriers parties to the merger and the elimination of 13,546 miles of parallel routes in the event the merger is approved, the Examiner makes this comment:

"The actual competition existing between the carriers involved is somewhat less than might be indicated by the duplicate highway mileage, by reason of the restrictions in the service they are authorized to render and differences in the nature of the traffic handled."

Now, thereafter he details the restrictions in operating rights and the nature of traffic of motor carriers parties to this merger, but, as the Commission will note, he applies no such test to carriers left out of the merger. We submit that if it is a proper test to apply to the carriers in the merger, it is a proper test to apply to the carriers not in the merger. The Division attempted to do so, in so far as the time and facilities permitted, but the Examiner makes no reference to the testimony of the Division. We believe that this is one of the glaring inconsistencies of the report. We feel that if it is to be applied to the carriers parties to the

897 merger, it should also be applied to the carriers outside of the merger.

The Division believes that the Examiner's report in this proceeding is as a matter of law at variance with the National Transportation policy in the two major particulars:

First, in his concept of the effect of the Transportation Act of 1940 upon the national policy of competition in the transportation field;

Second, in failing to apply a provision of the 1940 Act materially strengthening the national policy, which brings us to a consideration of railroad-banker relationship to this transaction.

Mr. Arnold has covered the first point; and, if the Commission please, I would like to direct the balance of my time to the second point.

Now, in our view this banking relationship of Kuhn, Loeb and Company adds an additional element of restraint in this case. The facts regarding this relationship are, briefly, as follows:

First, if this transaction is approved, Kuhn, Loeb and Company, through its wholly owned subsidiary, Transport Company, will become a substantial minority stockholder of Associated Transport, owning 6,877 shares or 18.13 percent of Associated's preferred stock, and 67,167 shares or 9.53 percent of its common stock. The preferred stock has voting rights share for  
898 share with the common.

Second, Kuhn, Loeb and Company has one of its office managers as director of Associated Transport.

Third, Kuhn, Loeb and Company has representatives on the Board of Directors of various railroads throughout the United States and has for many years been the banker for the Pennsylvania Railroad and Baltimore and Ohio Railroad, both of which serve the territory involved in the proposed merger, and which the applicant has shown by its exhibits are competitive with the carriers involved in the merger.

Fourth, it is denied that any arrangements have been made with Kuhn, Loeb and Company or any other banking house to handle the public sale of the securities to be issued. However, it is stated that the securities will not be sold at public sale but pursuant to private arrangement.

Now, the Division in its brief, prior to the proposed report, in connection with its consideration of restraint, pointed out this relationship of Kuhn, Loeb and Company to Associated Transport, and to these railroads; and again, in its exceptions brief the Division urges consideration by the Commission of this relationship, pointing out that control by Kuhn, Loeb and Company would in effect be control by those railroads.

Now, since filing the briefs the Commission has in a decision considered these interrelationships. This decision is a decision by Division 4 and involves the United States Trucking Corporation Purchase—William J. Kennedy. In that case it was shown that the United States Trucking Company was owned by the United States Distributing Corporation, a holding company, which in turn was owned by the Pittston Company, another holding company, which in turn was owned by the Allegheny Corporation—46 per cent of its stock; that is the third holding company—and then through various other relationships. The C. & O., the Nickel Plate, and the Pierre Marquette were shown to have some stock interest.

Now, the Commission has this very significant statement to make in connection with this interrelationship:

"The evidence submitted by applicants is not sufficiently complete to determine whether or not Allegheny Corporation"—that is the third holding company—"still has the power to control C. & O., although the large stock ownership of the former in the latter would indicate a substantial interest and a close relationship. If it does have such power, it would appear there could be little question that it and C. & O. together have the power to control United by virtue of their stock ownership in Pittston. With such power to control existing, the proviso of Section 5 (2) (b) would unquestionably be applicable to this transaction. The fact that C. & O. has not actively participated in the management of United, which the parties apparently rely upon to negative the fact of control, is immaterial, as such circumstances would merely indicate present satisfaction with the manner in which the affairs of United are being conducted by the directors and officers who are managing the operations.

Assuming the power to control United does not lie with the Allegheny Corporation-C. & O. combination of interests, it seems apparent that such power does not lie with any other stockholder or group of stockholders of Pittston. C. & O. owns 38.40 per cent of the outstanding voting stock of Pittston. This block of stock, bearing in mind the fact that Allegheny Corporation owns 23.36 per cent of the common stock of C. & O., would, in most situations, be sufficient to constitute power to control Pittston and United." And therefore the United States Trucking Company was held subject to the railroad proviso.

COMMR. MAHAFFIE. Now, the other stock was somewhat scattered there, as you just read.

MR. WIPRUD. That is correct, sir.

COMMR. MAHAFFIE. In this case will Kuhn, Loeb and Company be the biggest stockholder?



Mr. WIPRUD. Kuhn, Loeb and Company will be a substantial minority stockholder, Mr. Commissioner Mahaffie.

Commr. MAHAFFIE. Will any other single interest rival theirs?

Mr. WIPRUD. The Horton Motor Lines will have about 901 38 percent. Kuhn, Loeb and Company will have about— as far as voting power is concerned—I think about 10 percent.

Commr. MAHAFFIE. Now, will anybody else be greater in voting power than Kuhn, Loeb?

Mr. WIPRUD. As I say, the Horton interest would be about 38 percent.

Commr. MAHAFFIE. Anybody else besides Horton?

Mr. WIPRUD. I think not, sir. I think it would be the largest single block. There may be—You mean a larger stockholder between Kuhn, Loeb and Horton?

Commr. MAHAFFIE. Yes.

Mr. WIPRUD. I would have to check that.

Commr. MAHAFFIE. What I am getting at is whether the precedent you have cited is a real precedent or not. In that proceeding it seemed that there were pretty substantial blocks of voting power in the hands of these two concerns and that the rest was scattered.

Mr. WIPRUD. May I answer that this way, Mr. Commissioner: The provision in the 1940 Act to which I referred, and to which the Commission gave full consideration here, was Section 1 (3) (b) of the Interstate Commerce Act, which broadened the definition of "control." Now, the Committee Report shows that the broadened definition related specifically to the decision of the Supreme Court in Rochester Telephone Company v. United 902 States. Now, in that case the Supreme Court sustained an order of the Federal Communications Commission, wherein it was shown that the New York Company owned only one-third of the stock of the Rochester Company. In other words, the Congress adopted a definition of "control" having been fully informed of the concept of the Supreme Court in the Rochester Telephone Company case.

Commr. MAHAFFIE. Wasn't that, Mr. Wiprud, on the theory that the holding was large enough to be a possible controlling element? One-third was larger than anybody else, and the holding was that it had the power, in view of the scattered holdings of others, possibly to control.

Mr. WIPRUD. Mr. Commissioner, I haven't in mind the division of stock, but there were larger stockholders than the New York Company. There was a scattering of stock in that case, but they had in all one-third of the common stock, and it was held that, because they had a minority stock interest, they could

control, and the Supreme Court said that the Commission had a right to take that into consideration with the surrounding circumstances.

Commr. MAHAFFIE. You say in this case there were holders larger than the one-third?

Mr. WIRUD. I would have to check what the distribution of that stock was.

The point I make is this: Here was a substantial minority interest, which the Court said the Commission had a right  
903 to take into consideration with the surrounding circumstances.

Now, what we would urge the Commission to do here, as I shall point out in a moment, is to consider that relationship.

Here is all the Examiner says about it. He says:

"Ownership by banking houses of minority interests in carriers of itself has not been demonstrated to be inconsistent with the public interest."

But he fails to note the important point, and that is that one of the investment banking houses is one of the two largest railroad bankers in the United States, and that they have been bankers for the Pennsylvania Railroad and the B. & O. Railroad for many years.

Commr. MAHAFFIE. Do you think that has eliminated competition between the Pennsylvania and the B. & O.?

Mr. WIRUD. I think, sir, that that is the type of relationship which the enlarged definition of "control" was adopted for, and that the Commission should consider that relationship. They can't ignore it. That is a matter of which consideration can readily be eliminated by a banking house that has a substantial interest in a competing form of carriers.

In this view, then, there is involved the proviso of Section 5 (2) (b), which relates not only to acquisition of or interest  
904 in, motor carriers by a railroad but also by persons or corporations affiliated with a railroad.

Now, we are not left in doubt as to what an affiliate means. It is defined in the statute.

Now, to paraphrase the section, the issue of fact, then, would be whether, by reason of the relationship—and the Act does not say "stock interest"; it says "relationship"—of Kuhn, Loeb and Company to the Pennsylvania and the B. & O. railroads, it is reasonable to believe that the affairs of Associated Transport will be managed in the interest of those railroads.

This would, of course, involve a consideration of whether, if a conflict of interest should arise between these railroads and this motor carrier, Kuhn, Loeb and Company would or

could use the weight of their influence against the motor carrier in such manner as to further restrain competition.

Therefore, we respectfully suggest that the Commission examine this situation to determine, first, whether the relationship of Kuhn, Loeb and Company to the railroads, competitors of these motor carriers, constitutes affiliation with such railroads within the meaning of the Act; second, whether the substantial minority stock interest of Kuhn, Loeb and Company, under all the circumstances surrounding this transaction, including the fact that no single person or corporation owns a majority of the voting stock of Associated Transport, constitutes, or can  
 905 constitute, control of Associated Transport; and, third, if so, whether sufficient evidence has been adduced to sustain the required statutory findings under the proviso.

We believe that if such examination is made fully into this case, the same conclusion must be arrived at as in the United States Trucking Company case. Thank you.

Act. Chrmn. ARCHISON. Mr. Donoho.

906 Argument of Mr. HASKELL DONOHO:

Mr. Donoho. May it please the Commission:

The Secretary of Agriculture did not enter this proceeding until after the hearing and after the date fixed for filing briefs had passed. Therefore, in his exceptions to the Examiner's report he did not enter into any extensive arguments on the technical aspects of this case, nor shall I here in oral argument. Those arguments have been made, or will be made, before this oral argument is completed, and I do not think that I can add anything to them. I do wish, however, briefly to discuss one aspect of this case, which, in the opinion of the Secretary, is of great potential importance to the agricultural interests of this country.

The interests of American agriculture in preventing monopolistic control of transportation are obvious. Historically American agriculture has been in the forefront among those who have through the years fought monopoly. This Commission owes its existence, in large measure, to the agrarian revolt of the 70's against intolerable abuses growing out of railroad monopoly. Through the functioning of the Commission, railroad monopoly was controlled, but it was only with the development of the inland waterways and, more particularly, the free highway systems, that the railroad monopoly was broken. American agriculture led the fight for the development of the free highway systems,  
 907 and the benefits derived in terms of lowered transportation costs through competing transportation facilities have been considerable.

As I have stated, the development of free highways and the concomitant growth of the motor industry has given American agriculture the advantage of competing transportation facilities. It is because, through the participation of the banking house of Kuhn, Loeb and Company in this proposed merger, we detect a precedent which may ultimately result in the destruction of this competition that the Secretary has intervened in this case. I will briefly discuss this point.

It is submitted that the Examiner's conception of the implications of the minority ownership of Kuhn, Loeb and Company in this proposed merger is, to say the least, superficial. It has been pointed out that, following the consummation of the proposed merger, there will be nothing to prevent Kuhn, Loeb and Company from acquiring control of all the capital assets of the merger.

COMM. MAHAFFIE. If the Arrow Company were eliminated, would you have any objection then to the proposal?

MR. DONOHU. I will say this, Mr. Mahaffie. In our exceptions we stated that we were doubtful of the benefits to Agriculture—or, rather, that we feared for agriculture because of the merger of the motor truck lines themselves in that we feared it would destroy competition among the motor carriers. However, I will say this, that our principal fear in this case is because of the participation of Kuhn, Loeb and Company.

COMM. MAHAFFIE. I gathered from your statement a moment ago that you would not be here if the Arrow Company were not here.

MR. DONOHU. I think that is a fair statement; yes, sir.

Regardless, however, of whether Kuhn, Loeb and Company ever secures ownership of a majority of the assets of the proposed merger, it would be a naïve viewpoint, we believe, which would deny the serious possibility that Kuhn, Loeb can secure control of the operations of the proposed merger.

Students of business structures of this country are aware of the fact that in recent decades there has been a notable divorcement of ownership and control in American business concerns. Mr. Wiprud pointed to the case of Rochester Telephone Company v. United States, where the Supreme Court gave recognition to this divorcement. I might refer also to the study of Berle and Means, the "Modern Corporation and Private Property," where this fact is conclusively demonstrated. The all-important elements underlying control of most large concerns are the intangible factors of organization, managerial competence, financial interrelationships in the general business structure, and those intangible but vitally important factors growing out of strategic com-

mercial and business relationships. The existence of these 909 factors are economic realities which must be considered in any intelligent appraisal of actualities; and, it is submitted, it does not require great acuteness to see wherein, within the component parts of this proposed merger, the preponderance of these factors lie. It seems to us that they all lie with Kuhn, Loeb, with the possible exception of managerial competence, and that is something that can be bought.

Kuhn, Loeb and Company is the banker for the principal eastern railroad lines. They now propose to become a minority owner of the principal motor carrier in the east. The very fact that there was no railroad opposition to this proposed merger—

Act. CHRMN. AITCHISON. Who is becoming a minority stockholder?

Mr. DONOHU. Kuhn, Loeb and Company.

Act. CHRMN. AITCHISON. But I thought you said the eastern railroads.

Mr. DONOHU. No, sir. If I said that I did not mean to.

Act. CHRMN. AITCHISON. You said "they." I did not know who you meant.

Mr. DONOHU. Perhaps "they" did not relate back properly. Thank you for the correction.

The very fact that there was no railroad opposition to this proposed merger seems to us to indicate, at least to make 910 reasonable the proposition that, either through later acquisition of capital assets or through one of the many devices and mechanics of minority control, the railroad banking house of Kuhn, Loeb and Company will, in effect, control the operations of this proposed merger.

Commr. MAHAFFIE. By the way, the States also were asked for their representations in this matter. Has any State opposed this merger?

Mr. DONOHU. Not that I know of, sir.

Commr. MAHAFFIE. How do you account for that?

Mr. DONOHU. I do not know, except that with respect to our participation here we were not apprised of the implication of this case until the Examiner's report was almost ready to come out. That might be true of the various State commissions.

Commr. MAHAFFIE. Well, they were served with copies of the application, of course, and asked for any representations they cared to make.

Mr. DONOHU. I just couldn't answer that, sir.

To deny that such control, iff the event that such control is established, will destroy competition in eastern transportation is, it seems to us, to forget the plainest lessons of transportation history and to ignore time-honored financial methods.



We are sincerely fearful that the consummation of this proposed merger with the railroad banking house of Kuhn, 911 Loeb and Company as a component part will result in an effective cartelization of rail and motor transportation in the east. To American agriculture this is a result to be feared.

That completes the principal point that I wished to make.

I would, however, like to make one brief comment respecting an observation of one of the gentlemen arguing for the proponents of this merger, where he stated that the requirements of National defense would be better met by this proposed merger. It just seems to me that I should say there that, due to our new defense organization—and I am speaking of Mr. Nelson's office and Mr. Eastman's office—I am sure that cooperation—if you could use that term—could be forced to achieve the same results that this proposed merger would as far as the efficiency of utilization of material and equipment, and so forth, is concerned.

Commr. LEE. Would this proposed merger be more efficient if Kuhn, Loeb and Company were out of the picture?

Mr. DONOHO. Well, I would think, sir, if this is going to make for more efficient operation, it would be a more efficient competitor of the railroads.

Act. Chmn. ARCHISON. Well, if that was the case you would not be here, would you? The Department of Agriculture is interested in keeping your transportation costs as low as possible, aren't you?

912 Mr. DONOHO. That is entirely right, sir; and we are here only because we are fearful that through the participation of this banking house there will be a destruction of this competition between rail and motor carriers.

Act. Chmn. ARCHISON. And therefore the transportation costs would be higher.

Mr. DONOHO. Yes, sir.

Act. Chmn. ARCHISON. Will the costs of this consolidated company be higher?

Mr. DONOHO. Sir?

Act. Chmn. ARCHISON. Will the costs, or expenses, of this consolidated company be higher?

Mr. DONOHO. I assume not. But we are fearful that if it is controlled by railroads that the costs will be immaterial.

Act. Chmn. ARCHISON. You are quite aware, are you not, that our main problem up to the present time has been to establish a base rather than a ceiling for motor carrier rates?

Mr. DONOHO. Yes, sir; I am. In summary I might say that we are fearful of this participation. We may be seeing things under the bed. I don't know. I sincerely hope that we are. But we

would like to ask the Commission to consider very carefully these factors in this case that make us fearful. They are rather intangible and amorphous and hard to evaluate, but we do think

that under all the circumstances of this case they are worthy of serious consideration on the part of the Commission.

Act. Chmn. AITCHISON. Mr. Campfield.

914 Argument of Mr. W. S. CAMPFIELD:

Mr. CAMPFIELD. May it please the Commission, "as a representative of the Virginia State Horticultural Society, and other fruit growers associations in the Appalachian district, as set out in the petition of intervention dated September 30, I come here to request the Commission not to grant this application, for the reason or the reasons that have been so ably presented here today, which I will not go into, more ably presented than I could, and therefore I am going to confine myself mainly to but one phase of our objection, endorsing those that have already been made.

If this consolidation is allowed, I believe that it is but the fore-runner or pilot case of applications that will cover the principal highway routes of the entire United States. I think that is inevitable. There will be other cases like this as soon as this gets through, and then will arise the danger which we fear. By "we" I mean the fruit growers and agricultural associations. I believe that out of that will come an organized, concerted, high pressure movement in Congress by these United truck line trusts, plus the railroad lobby, which is one of the most powerful on the Hill, as I happen to know, for an amendment in the law or regulations for this Commission to eliminate the small, independent, for-hire trucker and the privately owned truck from the highways over which these associated or franchised lines  
915 would operate.

I thoroughly believe that that is the picture for the future, because I have been delving in this truck and railroad competition fight since 1929, and I know what some of their plans are. I knew that just such a probability as this was in the planning when this law was passed through Congress.

Now, the franchise lines are of little value to the fruit grower and to the producer of all perishables so far as the movement of their crop is concerned from the farm to the markets or storages. We do not ship that way.

COMMR. ALDREDGE. You mean by "franchised" common carriers?

Mr. CAMPFIELD. Yes. These people sitting here. I call them franchised lines. If that is wrong, I will call them common carriers.

Because the perishable crops are produced in volume usually over a very short season—peaches, for instance, only about ten days or two weeks; other crops perhaps a little longer time—requiring heavy tonnage at that time, and a sudden call for movement, a few hours delay may mean the difference between a loss or a profit. Therefore, the small grower up through our area finds that a neighboring truck owner, who may be a farmer who has a for-hire license, or a contract license, as we term it in Virginia, and who is not busy with his truck on his farm at  
916 that time, may be called in that night to pick up a load of peaches and start for town, or in the more concentrated area, immediately. The fleet of for-hire truckers are available and move in with a sufficient number of contract trucks to keep that movement going continuously day by day. That is where we get our service. Now, if—

COMM. ALLDREDGE. Do they go into the orchard?

MR. CAMPFIELD. Right from the packing shed and deliver it to the cold storage of the buyer. That is of great value.

Now, if these consolidations are allowed, and if they should follow the line that I fear, and there would be a tightening down of the regulations, and ultimately the elimination of those trucks, the perishable-fruit industry, whose perishables must be moved quickly, would be at the mercy of these common carriers, and they simply can't handle the movement as it is handled now, without a complete reorganization, and we are afraid of that.

COMM. ALLDREDGE. Do you fear that these trucks you talk about would be legislated off the highway?

MR. CAMPFIELD. Yes, sir. Yes, sir. I do fear that.

Now, I want to call attention to a fact that the motor trucks, by virtue of their very nature, are a short-haul vehicle. The railroads, through their present organization, interchange of equipment, and so on, are very highly and efficiently organized for short and particularly for long hauls. Now, we need the railroads.  
917 I do not think any one will deny that. We have got to have them. So why should we take steps that would encourage competition for the railroads in this long haul. The trucks have nearly got the short-haul stuff. They are hauling from 50 to 75 percent of the fruit and produce today in short hauls. I think our last data in Virginia shows they moved about 70 percent of the apples from the orchards to the markets, all markets, and to the cold storages. Now, the railroads have been greatly injured by that short-haul business, and I think we should not do anything to discourage the long-haul business, or we will find nothing left for the railroads but long hauls dead freight.

I know somebody will ask, "Why aren't the railroads here protecting their own interest?" I think they are. It is my candid opinion they are here protecting their interests. I have had a chance to study stock control of various companies. I do not believe Kuhn, Loeb ever goes into anything financially very deep unless they know where the control is. I don't think they do. I may be wrong.

Now, transportation is the life blood of industry. The farmer wants an easy, quickly obtainable, economical, and flexible service. Is my time up?

Act. Chrmn. AITCHISON. No. You go on to the red light.

Mr. CAMPFIELD. There is just one more point I want to  
918 bring out.

Now, I believe that unquestionably the small trucker is in a better position to give that service than the large one, and a more economical service, and as proof of that, I want to read from the petitioner's reply to exceptions, on page 6. He has already brought up some difficulties, that the large lines are caught between three-fires. The second of these is:

"Because they are among the comparatively large lines in an industry of small units, the demands placed upon them by the shipping public with respect to quantity and quality of service grow constantly more meticulous," and so forth.

"Third, in the face of these demands, which they are not financially and physically able to meet, they"—meaning the applicants in this case—"are sniped at, raided, and invaded by smaller lines with less overhead which in the past, having more territory than they could adequately serve, have now, through increased profits, brought about by specialized movements and increased tonnage, multiplied their competitive efforts for more business."

Exactly the point I am trying to make.

"Many lines, formerly very small, have grown substantially through mergers or acquisitions so that they are becoming new factors in many territories, and, through their greater flexibility  
919 resulting from smaller size, skim the cream of the business."

Now, that is the kind of service we want to protect, and that is the kind of service that I believe the small-trucker is in a position to give.

In closing let me say that it certainly would be against public policy to start any movement or grant any applications which might lead to a monopoly of the public highway system. Thank you.

Act. Chrmn. AITCHISON. Mr. Woods.

## 920 Argument of Mr. WARREN WOODS:

Mr. Woods. My name is Warren Woods, of the firm of Roberts and McInnis, appearing here as counsel for Super Service Motor Freight, a protestant, at the hearing and here, to the inclusion in the proposed consolidation of the Southeastern Motor Lines.

After listening to the learned arguments of many distinguished counsel, it is with just a little bit of temerity that I am about to present to you our interest, which is only incidental to these broader questions of public and statutory policy which other counsel have referred to.

We are, however, vitally interested in one question, which we believe is equally important, particularly so if you judge the frequency of its reference in the decided cases. That is the question directed by Commissioner Alldredge to Mr. Sullivan during the argument of Mr. Seymour with reference to a consideration of the status of rights of carriers in a finance proceeding. Mr. Sullivan, I believe, gave a much too general answer to that question when he said that the status of operating rights is not considered in finance cases.

Certainly, where questions of the jurisdiction of the Commission are involved, as, for example, those decided in the Lavine case, and later followed in other cases, the question of whether or not rights have been abandoned is involved in a finance case. Certainly in the case of an interested registered operator attempting to convey or to purchase rights the status of rights is involved; and certainly by other decisions of the Commission, where it is sought to use in an application for a certificate of convenience and necessity as consideration in the transfer of rights, the status of rights is again involved. And we submit, finally, of course, that where there is small likelihood of rights claimed only by application, as to which the Commission has already acted adversely, are present, the purchase price may well be quite excessive unless the probability of the confirmation of such rights is considered by the Commission in the case.

Now, briefly referring to the specific facts here, the Super Service Motor Freight Company is an operator whose routes run between Nashville, Tennessee, and Philadelphia, Pennsylvania. It has pending now a purpose application for certain rights between Philadelphia and New York City.

COMM. ALLDREDGE. What is its present route?

Mr. Woods. It goes through Knoxville, Bristol, Roanoke, Winchester, and on into Philadelphia. Its routes in general parallel the routes operated by Southeastern at the present time.



Now, considering Super Service's position here, it is necessary to go to the sources of the claimed rights of Southeastern. Southeastern came into existence as a motor carrier by incorporation some time during the year 1938. The sources of its rights are two. First of all, it claims the right to operate between Nashville and Knoxville as a result of successorship to certain rights owned by Hoover Motor Lines, which, in turn, Hoover claimed from a partnership known as Jacobs Motor Service.

Act. Chrmn. AITCHISON. Sort of an inherited monopoly.

Mr. Woods. Commissioner, I am not referring to monopoly; I am just saying an inheritance.

The original rights of Jacobs—I will put it this way: Jacobs began business operating between Nashville and New York City over what were in essence irregular routes prior to the grandfather date, sometime during the month of April, 1935. They were fined by the State of Tennessee and ordered to stop operating because of a violation of state laws. They abandoned their operations until after the grandfather date, resumed some time in January, 1935, operated sporadically one or two or three trips a month until February of 1936, when they abandoned all operations completely. They sold at a later time, after a certain period of abandonment, whatever rights or claimed rights they might have by virtue of this irregular operation between Nashville and New York City, to Hoover. Hoover in a finance case in which that sale was involved was granted by the Examiner, and by Division 4, only a divided right from Nashville to Knoxville, was not given any rights from Knoxville into New York, and despite the fact it was given that right—permitted to buy the rights between Nashville and Knoxville, despite the fact of proof and admission on the record, and later in argument before the Commission, of actual abandonment for a period of better than a year of the Knoxville to Nashville operation.

Now, here we have Southeastern coming into possession of its claimed rights between Nashville and Knoxville only by virtue of its successorship to these rights Hoover may have had there. We have further a convenience and necessity application on file by Southeastern, which is still pending before the Commission.

Commr. MAHAFFIE. I am not quite clear. Does your argument go to the theory that the Lavine case governs this and we have no jurisdiction over the acquisition of Southeastern, or merely that the price to be paid is too high in view of its dubious character.

Mr. Woods. It goes to both, Mr. Commissioner. First, that under the Lavine case Southeastern has no rights between Nashville and Knoxville which it can convey.

Commr. MAHAFFIE. It has other rights, hasn't it?

Mr. Woods. Now, the rights from Roanoke to New York City, it was admitted by their testimony at the hearing, are restricted. They cannot pick up or deliver north of Roanoke  
924 all the way into New York City.

Commr. MAHAFFIE. You do not claim it is not a motor carrier under Section 5, do you?

Mr. Woods. Yes, sir; we do in our brief. We have argued there, under the Maher case, that the claimed rights of Southeastern between Knoxville and New York City were acquired from Hoover and were, in fact irregular routes, later converted into regular routes; and that case also has not yet been finally adjudicated by the Commission, and there is no certificate to this date which has been issued to Southeastern Motor Lines.

So, in effect, we are claiming here that the proposed merger cannot obtain these rights between Knoxville and Roanoke; that Barnwell Brothers already have unrestricted rights from Bristol to New York City; and that Associated Transport is paying an excessive price for a small and unimportant right which may possibly in the remote future be confirmed in Southeastern to operate between Knoxville and Bristol, Tennessee.

Commr. MAHAFFIE. Well, have you anything—your Super Service Motor Freight, Inc., or whatever your client is—any other interest in the matter of principle than what is done as to the price?

Mr. Woods. Yes, sir; we have. We are only incidentally interested in the monopoly consideration that other counsel  
925 have referred to; but in so far as it is possible, perhaps from a commercially selfish angle we do not like to see what appears to us to be a huge competitor coming down into our district, and perhaps during the two years longer that it may be able to delay final judgment in Southeastern, which we think will be determined against Southeastern, perhaps drive us out of business. We think that the Commission should in this case decide that Southeastern has no rights from Nashville to Knoxville because they were abandoned.

Commr. LEE. In this case you think we should determine that?

Mr. Woods. Yes, sir; on the principle of the Lavine case.

Commr. LEE. There is nothing in the record here from which we can reach that conclusion, is there?

Mr. Woods. Yes, sir; there is.

Commr. LEE. In this case?

Mr. Woods. Yes, sir; through the testimony of Mr. Brock; also by reference. All you have to do is to go to your own dockets, look at the Examiner's reports, and look at the records which are before the Commission in this case.

Commr. MAHAFFIE. Well, there is no claim here that the entire operating rights of Southeastern was abandoned at any period, is there?

Mr. WOODS. Not abandoned, not; not entirely.

Commr. MAHAFFIE. And Southeastern is an operating company now; is it not?

Mr. WOODS. It is an operating company now; yes, sir.

Commr. MAHAFFIE. Then, how do you represent that on the basis of the Lavine case we are without jurisdiction?

Mr. WOODS. Because the only rights which Southeastern claims even between Knoxville and Nashville, Tennessee, we claim are shown to have been abandoned.

Commr. MAHAFFIE. Well, that is only a part of its rights.

Mr. WOODS. That is correct, sir.

Commr. MAHAFFIE. How does the Lavine case apply to that?

Mr. WOODS. Well, the Lavine case would certainly apply in moving that portion of the rights out of the picture here, so that the consideration must be regarded as applying only to claimed rights between Knoxville and New York City.

Now, in closing, I should like to point out again that the contract involved here does not make the inclusion of Southeastern in this merger an essential feature in the approval of the merger. Section 15 of the contract names only five corporations as being essential to the consummation of the transaction. Southeastern is not one of those five corporations.

Act. Chmn. AITCHISON. In the argument list we find Senator Shipstead and Senator O'Mahoney down for fifteen minutes apiece. We are informed that a War Bill is on the floor and that Senator O'Mahoney is in charge of it and he does not expect to be able to reach here until sometime after four. The applicants have the remaining thirty-eight minutes. Will it be satisfactory, under the circumstances, for Senator O'Mahoney to follow the applicants?

Mr. SULLIVAN. I think so.

Act. Chmn. AITCHISON. Then, you may proceed.

Mr. SULLIVAN. Then, Senator Shipstead, what about him?

Act. Chmn. AITCHISON. Well, I put him in the same class, when he comes.

Mr. SULLIVAN. I see.

Act. Chmn. AITCHISON. I have had no direct word from Senator Shipstead subsequent to his reserving the time.

928 Argument of Mr. MORTIMER I. SULLIVAN in rebuttal:

Mr. SULLIVAN. Mr. Chairman and Gentlemen of the Commission:

I am gratified. When you were addressed by Mr. Arnold, he at least relieved us of the responsibility, along with the Examiner, of attempting to follow German precedent. It is substantially the only thing that we have not been accused of since the commencement of this application.

Now, I want to say to you gentlemen at the beginning that we have been hard put to find some way of establishing our sincerity to the people that have seemed to surround us and harass us in every step we have taken since the beginning of this case.

We resorted to giving up whatever benefits or detriments lawyers' arguments might have in our direct presentation in order that you might have an opportunity to look at some of the principal parties to this application, to see them with your own eyes, and not through whatever veil of mystery or flattery or build-up lawyers might be able to give them. I myself speak at least partly as a truck man to you when I make my remarks, and if at least one of our briefs sounds, when you go to read it, a little, as Mr. Arnold said, as if somebody was having apoplexy, it is because these things have been very close to us. Not in a financial way—because all of us here have seen these companies, and we  
929 have been a part of them as they grew up from little operations that we have heard so much about today to more substantial operations—and it is as if somebody were trying to kidnap our children to hear the things said about us—about our deep, dark, mysterious plan, our conspiracy with Kuhn, Loeb and Company—and we have not practically been on speaking terms with them for nearly a year. So, no matter what we seemed to have done, to have thought, to have tried to do in this application, it has not pleased somebody.

Mr. Campfield, from the Fruit Growers Association, almost seems to complain that it is our plan to do damage to the railroads by seeking to get some of the railroads' business; and yet, on the contrary, we are part of a conspiracy in which the railroads can guide and control this company.

Perhaps we should have known better—I don't know—than to have attempted to acquire any interest in what we regarded as a sound substantial transportation system. Perhaps we should have kept away from Arrow Carrier. That did not occur to us. It gave us plenty of headaches. It has cost us plenty of money.

COMM. SPRAWN. Mr. Burchmore raised a question which I would like you in the course of your reply to comment on, and that is the possible capitalization here of the price that you are getting.

He indicated that four shares of common stock might be felt  
930 to be worth a hundred dollars, as much as the preferred share. That would be twenty-five million dollars, wouldn't

it? What was the basis for that supposed exchange of four shares of common for one of preferred?

Mr. SULLIVAN. I think I can answer that both directly and indirectly in this fashion: Contrary to those things that have been said about us in briefs, in addresses to clubs, and on the radio, we are really very simple people, Mr. Chairman. That conversion price that was set up in the charter, when the charter was drawn Mr. Claude Cochran reached into a hat, in effect, and pulled out a twenty-five dollar share, that conversion price being as good as any other conversion price that I suppose he could think of, and that was the conversion price. We make the statement in our reply brief that if the Commission, or Mr. Burchmore, wants some other conversion price, if anybody wants to name it, it is all right with us. Presumably if we had made it ten or fifteen dollars we would have been met with the same sort of argument. If we had made it five dollars we would have been met with an argument in reverse. We simply picked that. And it is a difficult thing to argue about, because I can't say what it is today. Obviously, if by some flight of fancy that price was reached; yes, the thing would be worth twenty-five million dollars. We might have picked fifty or one hundred for that matter; then it would be worth several hundred millions of dollars.

93f I want to say this: We did not pick Delaware to draw this charter. We did not put these companies together. We did not pick these seven companies that are in this merger, or the eighth company, Arrow, because Kuhn, Loeb thought it was a good idea. We did not consult their attorneys. This was done by seven operators, or their representatives, and the application that was put before you was an application which we say if it bears any resemblance to the Transport case of last year, bears that resemblance because we burned plenty of midnight oil and we consulted innumerable times and at hours of length, and we produced this application out of practically, sweat, blood, and tears, and we hoped that it might have the blessing of the Commission.

Now, if I were a politician—and you know you almost get to thinking queer things as you run into this sort of opposition—I suppose we would not have argued at all. We would only have gotten the Senator whose constituents we are; maybe we could have found some societies or industrialists who would come in here and, having use for our trucks, present arguments for us.

And I do not propose to go into arguments as to what the laws were in Germany, as to what the result of the cartel plan in Germany was. When Mr. Arnold presented his argument, talking



about the cartel plan in Germany, there flashed through my mind for a moment that someone might feel that we are  
 932 doing an un-American thing here, if there could be any resemblance to transportation in Germany. But I do say to you, it is interesting to hear the argument and the advocacy before you to the effect that, as opposed to a cartel plan, which in effect was a pooling of resources, that we can do the very thing: Instead of merging our assets—as you do in a free country of your own free will, that we can do it in one of two ways:

\* One, as Mr. Arnold suggested, by interchange of our equipment with other carriers, and no matter how large the damage—that is where we are uncoöperative. If some other fellow takes our equipment and smashes it up, and we don't like it, then, as I understand it, we are uncoöperative. So I hear it advocated by Mr. Arnold, and certainly by Mr. Donoho, that the way to resolve our difficulties of trying to get a reasonable geographic spread, so that carriers in one part of the country won't put you out of business, so you could get the advantages of giving the shipping public the through movement of freight—I hear it said that it should be forced on our neck, and that the Commission should have the power to say, "Mr. Horton, you take your equipment, your nice, shiny, privately insured equipment, and turn it over to a line which you know nothing about. Let them dash it to pieces." At least Mr. Donoho says under the emergency and for the good of  
 the country we ought to be made to do those things. I say

933 to you, Mr. Commissioners, that for the good of this country every man here has been using his assets to the last of his ability; that we are pooling freight; we have disrupted our schedules; we are running without thought of profit; we are pulling hundreds of thousands of cargoes for the United States Army, and paying insurance premiums that take 90 percent of the money the Government pays us. And I say we are trying to make possible, so far as we can, the expedition of freight, and doing the best we can until such time as we hope you will make it possible for us to do it in the way we know how, and not starving to death in this business.

Now, there is talk about we ought to go on in the same way as we have in the past. That is not a possibility. One look at the tax laws shows what happens. If a company could make a hundred thousand dollars in a year, the Government gets fifty thousand dollars of it; and the other fifty thousand dollars you don't even see, because if your business is improved—

Commr. SELAWN. Would that be changed by this grouping?

Mr. SULLIVAN. Yes; it will, sir, for this reason—and I am glad that you asked the question. If we can obtain the million and a

half dollars that we have calculated, then under those circumstances, with that much money, we can pay up the obligations that we presently have to meet out of depreciation. We can use the money to set aside for maintenance and repairs.

934 And once we put these things on a sound footing, then if the Government takes half, or sixty, or seventy percent of our profits, we have at least gained two things:

One, we know that if we run into a period of loss, at least the Government would also have to bear 60 percent of that loss, and so it doesn't seem so bad; and,

Secondly, the forty or fifty or sixty percent of the profits, whatever there is left, comes to you at least as cash, and not in the form of a truck that you have got to use for five years before you have got the cash. And so I say the picture changes overnight. It becomes a different picture. And when you have at least reached the stage that these lines have reached you are anxious and desirous to do it, because that is the next forward looking thing to develop a transportation system—not a company, but a system of truck transportation, that you feel you have been a part of.

Now, I am not going to stand here and argue this question of Kuhn, Loeb and their relationships with the railroads. That is a matter which you gentlemen will have to determine. You have to determine, of course, the whole case, but you have to weigh those arguments. We do not feel under an obligation to Kuhn, Loeb to any extent that would require us to press that argument.

I do say to you that it apparently was the cause of a very great deal of opposition which we have received. It made

935 this case—at least it made it take on prominence in the public eye, and it made it an attractive sounding board for the Anti-Trust Division to present to you gentlemen and to the world their views of truck transportation. I suggest that that should not be sufficient to have you lose track of the fact that, as a company goes, this is not proposed to be a large company. It is going to have assets somewhere around five-million dollars. It is not going to be a great octopus, reaching over the country. The record will be in front of you. You will have a chance to examine it.

I suggest there are two theories of regulation. We are before a body that is supposed to be experienced in this case, and is experienced and knows how to weigh the testimony. The Examiner took six weeks to decide the case, and he must have made a thorough and exhaustive check. We presented to you the best evidence we could on the subject of remaining competition.

COMM. MAHAFFIE. Did the Examiner take six weeks after the briefs were all in?

MR. SULLIVAN. I think it was close to that, sir.

If there was anything wrong about the exhibits that we submitted, there was plenty of opportunity to check them. The detailed findings of the Examiner confirm our contentions throughout the case.

It is one thing to look at a map like this and say, "Well, 936 look at the competition. Who is going to have a system like that?" The answer is, "The truck business." For example, in New York State your competition is the man who runs mostly within the confines of that state. In Pennsylvania, you have the same situation. In New England, the same. And so on throughout the south. There is some over-the-road business that flows through those territories. But they are only the tail that we should not allow to wag the dog.

Now, we are not going to be strapped into standing here and arguing a philosophy of regulated monopoly. We tried this case on the theory that what we were dealing with was a Commission viewpoint, at least to this date, that extends and accepts only a theory of regulated competition. We tried to put together a case which met the test of regulated competition. And we say that we have met the test of regulated competition. And while Mr. Arnold perhaps suggested that truckmen are rabbits, including us, we rather think that we are being used as guinea pigs for the purpose of determining what the Commission's views are on the subject of regulated monopoly in the transportation field, because you only move to any theory of regulated monopoly in this case by first saying this is a large merger; by next saying, as they have done, that Kuhn, Loeb and Company, having an interest of something less than ten percent of the whole, and being somewhere a third or 937 fourth stockholder down the line, if the Arrow were ap-

proved, are going to dominate this business; and then you have to move from there into the proposition of the railroads coming along, and that between the railroads and the trucks we are going to be built up to the point where we are going to move all other truck lines off the highway; and from there you get into an argument where you have to say, "Well, all those things being assumed, if we approve this merger, it must be regulated monopoly."

Now, we ask that you examine the record in the Examiner's findings; that you compare them with the exhibits that we presented; that you compare them with the sort of testimony that was presented by the Anti-Trust Division on that subject—testimony which was taken, not from your records as to certificates and operations in the territory, but from the one and two-line answers, and the financial report of Class I carriers, and the question as to what part of your territory or routes, and so forth, do you get your business, what are your a principal hauler of, and statistics of that sort.

Now, I say that the Commission's method of eliciting these things, the evidence which the Commission has consistently ruled in the past is the proper evidence, is a method entirely superior to anything that has been submitted here by the Division.

These lines are not big enough alone to go on meeting truck competition by independent truck lines, truck competition by these railroads, as they put it, dominated truck lines that they referred to, and competition direct from the railroads, themselves. We have gotten big enough and to the point where something else is necessary if the lines are to survive. We are not small enough to have the flexibility that the small lines have. We have all the burdens of sizable corporations without the advantages that any sizable corporation that you have dealt with or heard about has, and we haven't sufficient money so that we don't even know where our license plates are going to come from on the first of January. I say that because the Moran Transportation Line, doing business of over three million dollars a year, by the force and circumstances of its growth and demands of shippers placed upon them are hard put to it every year on the first of January to buy thirty dollars' worth of license plates. That is not a sound economical transportation that the country requires. And every line is in substantially that same position, with the possible exception of Arrow, who, because they were in business many years ago—

Commr. SPLAWN. What do you anticipate the net operating income would be for the first year after this company begins to operate as a consolidated company, if given that authority?

Mr. SULLIVAN. The net income or after taxes?

Commr. SPLAWN. After taxes.

Mr. SULLIVAN. Well, I have not seen the new tax law.

so—

939 Commr. SPLAWN. Well, according to the old tax law, not making any prophecy as to change in the tax law.

Mr. SULLIVAN. I checked my recollection with Mr. Reicher. He thinks somewhere around a million and a half dollars.

Act. Chmn. AITCHISON. Net?

Mr. SULLIVAN. That is net, based on the old tax law. What the new tax law will be should be an interesting question to the Commission.

Commr. SPLAWN. That million and a half net that you would realize would support what total capital structure?

Mr. SULLIVAN. Well, it depends then, I presume, on what basis you wanted to consider capitalizing it, wouldn't it? What factor you used to multiply the earnings by, or what capital structure you wanted to divide.

Commr. SPLAWN. Well, you are very practical in these matters of corporate organization. What would you suggest as being a proper capital structure?

Mr. SULLIVAN. My own thought on that—are we tying it in with transportation needs?

Act. Chrmn. AITCHISON. We are tying it in with your application. You are going to issue securities, aren't you?

Mr. SULLIVAN. That is so. I would put it this way, that I certainly think it would support a capital structure very considerably in excess of that which we have created.

Act. Chrmn. AITCHISON. You just mentioned five million  
940 dollars a moment ago. What was that?

Mr. SULLIVAN. I think that five million dollars—about four million two hundred would be the total capitalization of this company at a hundred dollars for the preferred stock and a dollar for the par.

Act. Chrmn. AITCHISON. If you got a million net after taxes, don't you think we had better begin to look into your rate structure?

Mr. SULLIVAN. That I would expect that you would do. If we produce that result, I certainly would expect that you would do it.

Commr. SPLAWN. If we tied your capital structure down, in the event we approved your application, to four or five million dollars, would that be satisfactory?

Mr. SULLIVAN. I don't know how we could change the capital structure. Certainly we expect that you will consider our capital structure to be the par of our stock plus our surplus.

Commr. SPLAWN. That dollar a share, you mean for that to be the common stock?

Mr. SULLIVAN. Certainly we do.

Commr. SPLAWN. Par value of one dollar?

Mr. SULLIVAN. That is right. We suppose that in considering the capitalization for rate-making purposes you would compute it perhaps as did the Examiner, but as it happens it comes out reasonably close to that. I assume that you would

941 consider the surplus as well as the—

Commr. SPLAWN. If I understood the Industrial Traffic, speaking through counsel, they are concerned with the fact that there may be here a twenty or twenty-five million dollar capital structure, or some capital structure very much in excess of four or five millions. Now, what is a practical way of avoiding such contingencies?

Mr. SULLIVAN. I don't know, unless he is thinking that we would be able to create that by either expansion of equipment or savings from earnings, and then change the par of our stock, as



he suggested, or change the amount without changing the par. Under his interpretation of the Delaware laws, I can't conceive how that would arise, and I can't conceive how it would affect the situation. I am quite sure—I think Section 102 of the Treasury's rules take care of our accumulations of surplus very nicely. I have no suggestion how we could protect against that, unless you were to adopt a regulation that we had to distribute surplus in the form of dividends when it got beyond a certain point, and that we might even be interested in doing without an order of the Commission.

Act. Chrmn. ARCHISON: Well, how do you make it five millions?

Mr. SULLIVAN. I was talking in round figures. We have a pro forma balance sheet which is in evidence. This is a  
942 balance sheet giving effect to the million and a half dollars which we hope to have permission to try to raise, and using that—we have preferred stock. Giving effect to that million and a half, we would have \$5,294,200 in common stock of one dollar. In the completed picture we would have \$7,104,651, or a total common and preferred of \$5,998,851, which would give us an unearned surplus of \$471,872.04.

Act. Chrmn. ARCHISON: What is going to happen to that surplus?

Mr. SULLIVAN. Well, we would consider that it stay that way.

Act. Chrmn. ARCHISON: How is it going to be used in the public service?

Mr. SULLIVAN. Presumably, since the surplus in effect is represented by a part of our physical working efforts, it remains in the public service, if that was your question.

Act. Chrmn. ARCHISON: Yes.

Really, I am more interested in knowing what kind of investment you are going to set up, rather than what your balance sheet is.

Mr. SULLIVAN. So far as the investment account is concerned, we propose, if we have a million and a half dollars, to use part of that to put ourselves in a more liquid position by retiring obligations that presently are current obligations, and as to the  
943 balance to use it to provide working funds in order that we may purchase in proper amounts, make provisions for proper deposits, and avoid certain interest charges that we are now subject to.

Act. Chrmn. ARCHISON. Well, I can see how those items might be said to be in the service of the public, but what I am trying to find out is how much have you got in that \$5,294,000 in your grandfather rights?

Mr. SULLIVAN. Oh, there is nothing. All intangibles have been removed, a hundred percent.

Act. Chrmn. AITCHISON. All right. Now, does the \$5,294,000 represent the physical property?

Mr. SULLIVAN. Absolutely.

Act. Chrmn. AITCHISON. On what basis?

Mr. SULLIVAN. I beg your pardon?

Act. Chrmn. AITCHISON. On what basis?

Mr. SULLIVAN. On the basis of uniform depreciation rates between the companies, which were calculated on the basis of the contract which we agreed upon, and which resulted in a net reduction of the book values of the equipment over that which they were personally carrying on the books. We used a harsher formula ourselves than that which the Commission expects from us.

Act. Chrmn. AITCHISON. That is what I was getting at.

Mr. SULLIVAN. I am sorry. I was not following you.

Commr. SPLAWN. In connection with your surplus account there is one contingency that I do not quite understand. You propose to give a conversion rate of preferred into common, four shares of common for one of preferred. Your common is a dollar per share par, and your preferred is a hundred. You have the difference of 24 dollars a share, which I would assume you would figure carrying into surplus.

Mr. SULLIVAN. That is right.

Commr. SPLAWN. I have some doubt whether that is sound financing, and I wondered if you had considered whether it would not be preferable to make this common no-par common with a stated value, which might be adjusted if and when there is such conversion.

Mr. SULLIVAN. It would be entirely agreeable doing that. I might say that the reason it is a dollar par is the extremely naive one of avoiding questions among ourselves when we were trying to put together a cooperative effort, which was not the easiest thing, because there was six or seven truckmen trying to interpret what it was each one was trying to do, and with different advice from his own personal counsel in each case. It simply made the picture simple to us, and we hoped it would look simpler to the National Industrial Traffic League. We feared that with no par stock the accusation might be more serious than that we met with.

Commr. SPLAWN. Now, if we should approve the application, you are agreeable to a condition that would prevent the increase of surplus as a result of conversion?

Mr. SULLIVAN. Absolutely, sir. And lest there be any doubt, there is one thing I want to say, in view of your decision in the Transport case, in which we occupied only the position of sellers—but I do want to say this about that: With this applica-

tion, the unification provision with respect to this application, we are ready, Mr. Horton is, to ask for immediate authority to merge these companies into one company and assume the obligations in liabilities, and if there is anything required there in order to do it, to come before you and get the appropriate authority for the assumption of obligations, we are willing to do that any time. We asked you for a year because of a sound reason, the reason of common sense. Maybe all of us hadn't put our minds entirely to it until we have had a chance to examine all the other properties more fully than we have had in the last few months. We ask only that that be done immediately. If we can have a year, all right. We are not seeking to have any holding company device.

Commr. PATTERSON. Do these applicants now interchange truck bodies with each other?

Mr. SULLIVAN. It has been tried by various companies. We don't among ourselves, except Moran and McCarthy have a movement that used to be larger than it is between New England and New York in which they interchanged truck bodies. There  
946 is considerable testimony in the record on that. It is a very unsatisfactory and a very unhappy arrangement.

Commr. PATTERSON. Is that because you are not able to get reimbursement for damages?

Mr. SULLIVAN. It is not only damages, but each one has a different type of equipment. Some have air brakes; some have vacuum brakes; different lights; some use a shorter trailer, and some use a longer trailer, and so on. If it is your own property, if you are running your own system, you were all in a common pot, you don't care how you do it, you run it for the good of all. But when you get to exchanging with the other fellow, it is just human nature; you can't control that situation.

Commr. PATTERSON. You will still have the same equipment when you are consolidated, won't you?

Mr. SULLIVAN. Yes; but we can move it around in different parts of the system and use certain equipment in a particular territory.

Commr. PATTERSON. You could still do all those things with a suitable interchange agreement, couldn't you? Couldn't you standardize your equipment?

Mr. SULLIVAN. Well, if all seven were to do it. You remember, some of it is nine or ten years old, and when, as, and if we can buy it—of course, I don't know how many years to come it will be before we can buy it.

947 Commr. PATTERSON. I know, but this physical equipment won't change. If you consolidate these companies, the physical equipment will be the same. Well, if you can do it by consolidation, you can do it by interchange.

Mr. SULLIVAN. You mean seven companies can get together?

Commr. PATTERSON. Yes; or twenty-seven. What about a suitable interchange agreement for the purpose, the standardization of the equipment, and suitable rules for reimbursement of damage?

Mr. SULLIVAN. First, I would suspect, if we did that, it would not be long before we would be up in the Federal Court or putting our competition out of business, unless we let every truck line join in.

Secondly, it is difficult for me to conceive how we can plan to say to Mr. Horton, "Mr. Horton, Mr. Moran has equipment suitable to your territory, so you and Barnwell can use it. Will you take all of his equipment and give us all of yours?" Well, it is more difficult to say it can be done than to explain why it can't be done.

Commr. PATTERSON. Well, isn't this equipment, the trucking equipment, particularly with respect to motors and bodies, being gradually standardized now?

Mr. SULLIVAN. Mr. Horton has probably the highest degree of standardization, because he has gotten to the point where he  
948 builds his own tractors and he builds his own trailers. Up until the last year, I think, people were trying to standardize, but it meant a four or five year program to do it. But in the last year, with supplies as scarce as they have been, I think most of the companies have had to abandon temporarily standardization.

I think I have about a half a minute.

Act. Chmn. ARCHISON. Go ahead.

Mr. SULLIVAN. Well, I think I have completed. I don't know that I have succeeded in making you really believe we are honest about this thing. We are hoping we can put it together in such a manner that the work that we have done, getting to know each other under different circumstances in the last year, that we can put that work now to the useful purpose of serving the public, because we at least have done something to the industry; we have succeeded in having seven truckmen getting together and agreeing to put their all in one boat, and taking their chances with each other, when formerly it was not even safe for two to be in the same room.

Commr. SPLAWN. This Southeastern that Mr. Woods was telling us about, just what is it adding to your activity? Does it take you to New Orleans?

Mr. SULLIVAN. No; Southeastern does not go to New Orleans, sir. Southeastern goes to Nashville and Knoxville.

Commr. SPLAWN. Who moves to New Orleans?

Mr. SULLIVAN. The Transportation, Inc.

949 One of the things that Southeastern brings to us is the youth and experience of Mr. Gilbert Brock, who took a company that was substantially broke two years ago, when he took it over, and really built a truck line out of it, which shows what can be done right under Barnwell and Horton's noses.

Commr. SPLAWN. If that company and the one into New Orleans are serving the southeast, are they also going into New England?

Mr. SULLIVAN. The situation is this—I think you are asking me: Would you run trucks all the way from New Orleans to Northern New England? Is that your question?

Commr. SPLAWN. Yes. I want to know if there is a demand so far as the shipping public is concerned for a through service from the Gulf to Canada.

Mr. SULLIVAN. We would suspect that there is not. We testified at the hearing that we have no intention, unless a public demand would develop for such service, to ever run such a service. We do not believe it is just possible at this stage of the game. Now, in the next year or two transportation may be so tied up you might have to run such a service. We can't conceive on any basis of rate at the present time how such a service would be economically possible. There are four truck lines that run from approximately Charlotte and Atlanta into New England, and they 950 seem to be doing all right. Mr. Akers testified during the hearing that he runs the Akers Line and that he is doing all right on that long haul movement.

Commr. ALLDREDGE. Is he the one that handled that barge transportation?

Mr. SULLIVAN. Akers? I wouldn't know that, sir. He was an intervener for the purpose of trying to see what this hearing was about, I guess. He was not in opposition. He testified that he would be glad to see the merger because it would mean less solicitors calling on his customers. He also told Mr. McCarthy that he is giving up the forwarder traffic.

Commr. ALLDREDGE. When did he do it?

Mr. MCCARTHY. I talked to him some time back, three or four months ago, and I understand he gave it up.

Commr. SPLAWN. I am still interested in what Southeastern Lines are going to contribute to this consolidated operation.

Mr. SULLIVAN. Well, the Southeastern Line, Mr. Brock's company, moves off over towards Nashville and Knoxville, and covers territory towards the southwest that is not served by any of the other lines in the group. The Transportation Line moves down to New Orleans, and I guess even as far as Mobile, and serves territory not served by other lines in the group. It presently does



not make money, but we are of the opinion that with a different management it will, because it has a lawyer running it now, 951 and they always tell me, "Southeastern can't get business; they got a lawyer running it," but they hope to correct that when they get a truckman running it. It is a long, skinny operation at the end. We think it is fertile ground for experimentation, improvement of service down there, making it a real adjunct to the merger.

Commr. SPLAWN. That is along the line I was inquiring this morning. What is to prevent an ambitious management from entering upon many such experiments and reaching out into Los Angeles and San Francisco?

Mr. SULLIVAN. Well, I can think of seven reasons at the moment. We certainly would have to come to you gentlemen with an application, and you could call your shot then, or, to put it in Mr. Arnold's language, you can determine whether the deuces are wild.

Act. Chrmn. AITCHISON. Mr. Attorney General.

Mr. ARNOLD. Mr. Chairman, I understand that the two Senators are still engaged in debate on the floor of the Senate. Speaking with Senator O'Mahoney's secretary, he suggested the only thing that can be done is to allow them to file a memorandum, if that is proper under your rules.

Mr. SULLIVAN. I have no objection.

Act. Chrmn. AITCHISON. I assume there would be none. Will you get word to the Senators that if they send a memorandum we will have it incorporated?

952 Mr. ARNOLD. I will do that.

Mr. SULLIVAN. I do not think we will need to reply to the Senators, who are from Wyoming and Minnesota, and I can't speak either accent.

Act. Chrmn. AITCHISON. Well, with the understanding, then, that you will receive a copy of the statement the Senator sends down, you may have a reasonable opportunity to answer it, if you wish, and if you do not care to, you will let us know.

Mr. SULLIVAN. Yes, sir. Thank you.

Act. Chrmn. AITCHISON. These applications, then, are submitted and taken under advisement.

The Commission will adjourn.

(Thereupon, the above case was submitted, as indicated.)

953

UNITED STATES SENATE.  
 COMMITTEE ON FOREIGN RELATIONS,  
 Washington, D. C., January 27, 1942.

HONORABLE CLYDE B. AITCHISON, •

*Chairman, Interstate Commerce Commission,  
 Washington, D. C.*

MY DEAR MR. CHAIRMAN: Several days ago I requested an opportunity to appear before your Commission in the Associated Transport Merger Case which had been set down for argument yesterday, January 26. Important pending legislation, the second warpower bill, prevented my appearance. I am advised that you have extended to me the courtesy of filing with your Commission a statement of my position in this matter.

One outstanding assurance which those of us who opposed the Transport Act of 1940 received from those who sponsored that Act was that the guaranty against railroad domination and control of the motor carrier industry was retained. This assurance was given the Senate and House in the following language:

"The conferees wish to make it plain that it is not their intention by changing the language of Section 213, heretofore quoted (the railroad proviso), to change the legislative intent one iota with respect to the acquisition of a carrier by motor vehicle by a carrier by railroad, and that it is the intention of the conferees that Section 5 (2) (b), as amended by Section 7 of the conference report, shall have the same practical application and legal effect as Section 213 (a) (1) as it is now shown in Part II of the Interstate Commerce Act," 76 Cong. Rec. 17510, 15, 583. (1940).

The statute, then, is still subject to interpretation in accordance with the explanation made by Senator Wheeler when the Motor Carrier Act of 1935 was enacted, as follows:

954 "With this limitation (the railroad proviso), it will be possible for the Commission to allow acquisitions which will make for coordinated or more economical service and at the same time protect the public against the monopolization of highway carriage by rail, express or other interests." 74 Cong. Rec. 5655 (1935).

A similar statement was made to the House of Representatives by Representative Sadowski. 74 Cong. Rec. 12206 (1935).

For years I have been a member of the Interstate Commerce Committee of the Senate. By Senate Resolution 71, 74th Congress, a subcommittee, of which I am also a member, was appointed for the purpose of instituting a comprehensive investigation of the relationships between railroads and holding companies and banking houses. Numerous reports have been issued from time to time since February 1, 1939, in the form of public

documents. These reports graphically show the baneful effects of investment banker control of or association with railroads, an outstanding example of which has been the financial relationship of Kuhn, Loeb & Company to numerous railroads throughout the country. These reports are too numerous to cite here but as they are public documents I assume the Commission is advised of their contents. The purpose of these reports is to expose to public view the evils of these relationships and practices so that through legislation and administration these practices shall cease.

Therefore, I noted with satisfaction that your Commission condemned the efforts of Kuhn, Loeb & Company, the second largest railroad banking house in the country, to fasten upon the motor carrier industry the methods and practices of financial exploitation which they have, to the detriment of the public, carried on so long in the railroad field.

I understand that in the Associated Transport Case, now before the Commission, Kuhn, Loeb & Company will have a substantial minority stock interest, about ten per cent; that the contention is that this interest does not and cannot constitute in Kuhn, Loeb & Company control of Associated; and 955 that therefore none of the evils illustrated in the above reports can be expected to result. This view denies realities in such transactions, particularly where no person has actual stock control. The subcommittee reports are filled with examples of the exercise of control through minority stock interest or even by means of banker relationship without stock interest.

All such relationships are subject to the Commission's jurisdiction. If there remained any doubt, that doubt was removed in the 1940 Act. This was done by adding a provision to Section 1, paragraph 3, of the Interstate Commerce Act, a new subparagraph (b), broadening the definition of control, as follows:

"For the purposes of Sections 5 . . . of this Act, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control."

Congress had the benefit of a Supreme Court decision in adopting this definition of "control." In fact, this decision, *Rochester Telephone Co. v. United States*, 307 U. S. 125, as the conference report shows, furnished the basis for the broadening of this definition in the Transportation Act of 1940. In that case one-third common

stock interest was held to constitute control, under all the surrounding circumstances, though the other two-thirds was held in one unit under a voting trust.

In the Associated Transport Case there is involved the question of the preservation of the guaranty against railroad domination and control of motor carriers. This is so because Kuhn, Loeb & Company have been for many years and still are bankers for the Pennsylvania Railroad and Baltimore & Ohio Railroad 956 which are competing systems of transportation to the motor carriers in the Associated Transport Case. This method of indirect control was sought to be reached by Congress for Commission scrutiny and action. We had understood that ample provision was made therefor. It is just such interrelationships that lead to the circumvention of the provisions guaranteeing against unrestricted entry by railroads into the motor carrier field and no narrow interpretation of law urged by railroad-bankers interests should be permitted to defeat the Congressional purpose. Otherwise, the assurances which I have mentioned become meaningless.

I thank you for the opportunity of expressing these views. As requested, I am sending a copy of this letter to the members of the Commission and to the parties in the Associated Transport Case.

Very truly yours.

HENRIK SHIPSTEAD.  
Henrik Shipstead.

Copies to—

Commissioner Claude R. Porter, Interstate Commerce Commission, Washington, D. C.

Commissioner William E. Lee, Interstate Commerce Commission, Washington, D. C.

Commissioner Charles D. Mahaffie, Interstate Commerce Commission, Washington, D. C.

Commissioner Carroll Miller, Interstate Commerce Commission, Washington, D. C.

Commissioner Walter M. W. Splawn, Interstate Commerce Commission, Washington, D. C.

Commissioner John L. Rogers, Interstate Commerce Commission, Washington, D. C.

Commissioner J. Haden Alldredge, Interstate Commerce Commission, Washington, D. C.

Commissioner William J. Patterson, Interstate Commerce Commission, Washington, D. C.

Commissioner J. Monroe Johnson, Interstate Commerce Commission, Washington, D. C.

Hon. Thurman Arnold, Assistant Attorney General, Anti-trust Division, Department of Justice, Washington, D. C.

Mr. Mastin G. White, Solicitor, U. S. Department of Agriculture, Washington, D. C.

957 C. A. Cochran, Law Building, Charlotte, North Carolina; Hugh M. Joseloff, 410 Asylum Street, Hartford, Connecticut; Mortimer Allen Sullivan, Prudential Building, Buffalo, New York; J. D. Lawson, P. O. Drawer 540, Charlotte, North Carolina; Fred A. Tobin, 932 Bowen Building, 815 Fifteenth Street, NW., Washington, D. C.; Warren Woods, Roberts & McInnis, 735 Transportation Building, Washington, D. C.; John M. Miller, First National Bank Building, Kingsport, Tennessee; Charles J. Fagg, 24 Branford Place, Newark, New Jersey; W. G. Burnette, 209 Lynch Building, Lynchburg, Virginia; Floyd F. Shields, 221 West Roosevelt Road, Chicago, Illinois; Joseph W. Connelly, No. 1 Franklin Street, Alexandria, Virginia; James D. Mann, 450 Munsey Building, Washington, D. C.; James A. Glenn, 735 Bowen Building, Washington, D. C.; Edward F. Lacey, Executive Secretary, National Industrial Traffic League, 450 Munsey Building, Washington, D. C.; W. H. Ott, Jr., 500 Peshtigo Court, Chicago, Illinois; Thomas P. O'Brien, 815 Fifteenth Street, NW., Washington, D. C.; J. B. Dempsey, First National Bank Building, Kingsport, Tennessee; L. F. Orr, Arcade Building, St. Louis, Missouri; W. S. Campfield, Secretary, Virginia State Horticultural Society, Staunton, Virginia; Carroll R. Miller, Secretary, West Virginia Horticultural Society, Martinsburg, West Virginia; L. E. Newcomer, Manager, Berks-Lehigh Mountain Fruit Growers, Inc., Boyertown, Pennsylvania; Fred Breckman, Washington Representative, National Grange, 1343 H Street, NW., Washington, D. C.; Edward A. O'Neil, President, American Farm Bureau Federation, Munsey Building, Washington, D. C.

958

[Copy]

JANUARY 28, 1942.

HONORABLE HENRIK SHIPSTEAD,

*United States Senate, Washington, D. C.*

MY DEAR SENATOR SHIPSTEAD: The written statement which you have submitted in the Associated Transport Control Cases, Docket Nos MC-F-1612 and 1618, has been received. We would have been glad to have had your statement made orally, but as that was impossible, it was agreed by all concerned that your statement, when received, would be made a part of the record upon the argument, and it will be so considered. I notice that you have furnished my colleagues each with a copy, and that a copy has been sent to counsel for each of the parties appearing in the cases.

Mr. Sullivan may desire to reply. It was understood that if he did, he would file his reply promptly and would, of course, see



that copies were sent to you and others who have appeared in the proceedings.

Very truly yours,

(s) CLYDE B. AITCHISON,  
*Acting Chairman.*

959

UNITED STATES SENATE  
COMMITTEE ON APPROPRIATIONS,  
*February 16, 1942.*

HONORABLE CLYDE B. AITCHISON, *Chairman,*  
*Interstate Commerce Commission, Washington, D. C.*

MY DEAR MR. CHAIRMAN: It was a matter of great regret to me that, having been designated by the Chairman of the Judiciary Committee of the Senate to take charge of the Second War Powers bill which was before the Senate on January 26, I was unable to appear before the Interstate Commerce Commission on that day to participate in the argument of the Associated Transport, Inc. case and I desire to express appreciation of the courtesy of the Commission in permitting me to file a statement of my views. I shall make it brief.

When the application for authority to make the proposed merger came to my attention I took the liberty of suggesting to Assistant Attorney General Thurman Arnold, who had been the representative of the Department of Justice on the Temporary National Economic Committee, of which I was chairman, that the Anti-Trust Division intervene in this case to oppose the merger. This I did because of my conviction, as a result of the studies of the TNEC, that the maintenance of the policy of the Sherman Anti-Trust Act is more important now than ever before and that the creation at this time of the largest motor vehicle common carrier in the United States (Proposed report, sheet 37) by the merger of eight large carriers, among whom "substantial competition exists" (Proposed report, sheet 24) would not be "consistent with the public interest."

It seemed to me when first I heard of the application that a huge new merger bringing under single control more than 24,000 miles of route operation from the Canadian Border to New Orleans could not fail to be out of harmony with the competitive ideal. After I had the opportunity of reading the proposed report, no doubt was left in my mind that I should seek an opportunity to express to the Commission my belief that the proposed merger should not be approved.

The argument may be summarized as follows:

960 1. The national policy in opposition to combinations and mergers in restraint of trade has not been abandoned by Congress.

2. The history of our times has demonstrated beyond cavil that the steady concentration of economic power in fewer and fewer large units has been accompanied by increasing economic instability, unemployment of both men and money, the progressive deterioration of little business, the undermining of local economic independence and the constantly growing demand upon the government to support the people who, because of this very concentration, are losing the power to support themselves.

3. There is nothing in the Motor Carrier Act to indicate a Congressional intent to *promote* motor carrier mergers, but, on the contrary, the Act itself by requiring the submission of merger applications to the Commission, is proof of an intent on the part of Congress to bring mergers under public supervision.

4. The whole philosophy of the Interstate Commerce Commission Act and related statutes is that the activities of carriers and interstate commerce should be supervised in the public interest. It follows, therefore, that the first consideration of the Commission in all such cases as the present one must be the public interest and not the convenience or profit of the applicants. The record here fails to disclose any public demand for the proposed merger, but, on the contrary, the proposed report clearly shows that the application rests only upon an insubstantial basis of prophecy that the merger would tend to "greater economy and efficiency of operation" (Proposed report, sheet 11) and "would result in simplifying relationships with shippers and public regulatory bodies." (Proposed report, sheet 13).

5. The proposed report is full of findings, admissions and conclusions which demonstrate that no sufficient basis of fact has been presented to justify the conclusion that a reversal of the fundamental national policy against combinations would, in this case, be consistent with the public interest.

1 and 2. Volumes could be written to support propositions 1 and 2 above. Suffice it to say that although Congress has upon occasion granted exemptions from the antitrust laws it has usually, as in the case of the NRA, repented its lapse from sound principle. A proposal to repeal the antitrust laws would not have the support of any political leader or any political party because it is altogether too clear to the people that combinations and mergers have been among the most efficient causes of economic distress.

Whenever it is argued, therefore, that Congress, in any particular statute, intended to foster combinations and mergers, something much stronger than an inference must be presented. There should be a positive showing that the proposed merger is definitely in the public interest.

961 3 and 4. The argument of the Examiner in the present case is based wholly upon inference. He contends (Pro-

posed report, sheet 39) that Congress by "recent legislation" showed an "intent to encourage railroad unifications" and draws from this the conclusion that it must therefore be assumed that Congress also intended to encourage motor carrier unifications.

Let me quote from the proposed report:

"Recent legislation shows a Congressional intent to encourage railroad unifications. In view of the national transportation policy, as declared in the act, it cannot be supposed that Congress intended that the motor-carrier industry, a coordinate and competing form of transportation, should be discriminated against in such respect. On the contrary, considering the much greater number of motor carriers of property and their relative size as compared with railroads generally, the need of unifications in the trucking field is more apparent than in the case of railroads, which have already had many years of development."

It seems to me to be clear that "it cannot be supposed" that Congress intended to promote combinations and mergers in the motor trucking field without a specific declaration of such intent by Congress. "The need of unifications in the trucking field" may be "more apparent" to the Examiner "than in the case of railroads" but until Congress has indicated a clear intention to promote such unifications, surely it cannot be argued that the alleged need is at all apparent to Congress.

It is not necessary, I am sure, to point out to the Commission that conditions in the railroad and motor transportation fields are utterly different and that a Congressional policy, which may have been adopted in respect to the former, is not at all to be assumed to be the policy in respect of the latter. If Congress has intended to promote motor truck mergers, it would have said so.

As a matter of fact, the passage of the acts giving the Interstate Commerce Commission jurisdiction over carriers by motor vehicle demonstrates the contrary intent. The natural growth of motor transportation without federal supervision had been such that Congress came to the conclusion that public supervision should be provided. *Before the passage of the Act*, this merger could have been perfected without submission to the Interstate Commerce Commission. The fact that the application must be considered by the Commission is proof, it seems to me, that the intention of Congress was to make certain that mergers and combinations in the future should be primarily in the public interest.

5. Can the Commission, on the present record, make a positive finding that the public interest would be served by the proposed merger? The proposed report makes no such finding. Indeed, it undertakes, in a wholly negative manner, to argue that the public interest would be served, as may be clearly shown by a few quotations:

962 On sheet 2 we find this sentence:

"A number of other motor carriers, shippers, shipper organizations and the Lynchburg, Va., Chamber of Commerce also intervened but did not oppose the application."

Is the failure of certain interveners to oppose the application to be construed as evidence of public demand?

On sheet 11 we find the following sentence:

"The evidence is convincing that unification of these carriers under common control, and consolidation of their operations into one unit, would present many opportunities for greater economy and efficiency of operation."

Is the presentation of an opportunity any indication that advantage will be taken of it? Are economy and efficiency of operation by a large economic organization necessarily in the public interest? Economy and efficiency of operation are primarily in the interest of the owners of an enterprise. Economy and efficiency such as would appeal to an efficiency engineer might very easily cut down public service and reduce opportunities for employment.

Indeed, that would be the case in this instance as the report shows in the last paragraph on page 11 wherein it is pointed out that terminals would be consolidated and rearranged in 129 cities and towns. If the 179 separate terminals in these 129 cities and towns were to be reduced, there would be an obvious "opportunity for greater economy and efficiency of operation" in the number of persons employed, as was clearly apparent to the Examiner who, on sheet 13, says:

"A reduction in the number of solicitors calling on shippers would result."

On sheet 16 the proposed report recognizes the possibility of labor displacement, but brushes this consideration off by referring to it casually as a "minor detriment to employees." If the Examiner had sat, as I have sat, on a Congressional appropriation committee confronted with the necessity of providing appropriations out of an ever-deepening national deficit to take care of unemployment, he might not have regarded a manifestation of unemployment as a "minor detriment."

On sheet 23 the Examiner proposes that the Commission should find:

"That there are substantial duplications in the operations of the carriers involved and, under such circumstances, continuance of separate operations by them under common control would be uneconomical and inconsistent with the public interest."

963 The characteristic of competition is duplication of service. The elimination of duplication of service reduces employment and deprives the public of the advantages of competition. This argument of the desirability of removing duplication

has been the favorite argument of the promoter in support of every merger and combination for which stocks and bonds have been sold to a gullible public.

On sheet 24 the Examiner acknowledges that competition would be eliminated by the merger in the following sentence:

"Undoubtedly, substantial competition exists between certain of the carriers involved, and consummation of the instant transactions would eliminate such competition."

My point is that this substantial competition should be maintained that the Commission should do nothing to eliminate it unless it should be demonstrated clearly to be in the public interest. No such demonstration has been made in the proposed report.

I shall not undertake further analysis of the report, nor shall I prolong the argument. Suffice it to conclude by expressing the hope that the application will not be approved.

As requested, I am enclosing copies of this letter for the members of the Commission and am sending a copy to the parties in the Associated Transport Case.

Sincerely yours,

JOSEPH C. O'MAHONEY.  
Joseph C. O'Mahoney.

JCOM: M

964

FEBRUARY 7, 1942.

[Copy]

Honorable JOSEPH C. O'MAHONEY,

United States Senate, Washington, D. C.

MY DEAR SENATOR O'MAHONEY: I am in receipt of your letter of February 16, 1942, containing your written argument in Docket No. MC-F-1612 and 1613, Associated Transport Control Cases, together with copies for my colleagues which I will have transmitted to them promptly. A copy will be filed in the docket and will be considered a part of the record upon the argument.

On behalf of the Commission I wish to thank you for your interest in this proceeding.

Very truly yours,

(s) CLYDE B. AITCHISON,  
Acting Chairman.



965

FEBRUARY 21, 1942.

HON. CLYDE B. AITCHISON, *Chairman**Interstate Commerce Commission, Washington, D. C.*

RE: ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—

ARROW CARRIER CORPORATION, ET AL.—Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES—

Docket No. MC-F-1613

DEAR MR. CHAIRMAN: Upon returning to the office today after a short business trip, it was found that on February 19th we were in receipt of a copy of a communication dated February 16th addressed to yourself from the Honorable Joseph C. O'Mahoney in the matter of the Associated Transport, Inc. presently pending before the Interstate Commerce Commission. We had presumed that the Commission's courtesy in permitting the filing of a statement on the Senator's views and our acquiescence in such a procedure carried the implication that such a statement would be seasonably filed.

At the time of oral argument we implied a doubt of our ability to understand the accent of persons whose residence and primary interests are removed by fifteen hundred or more miles from the needs and problems of the parts of the country under discussion. During the past few months by virtue of necessity we have acquired considerable familiarity with the accent of the Anti-Trust Division and accordingly although the hand may be the hand of Esau we feel constrained to reply to the voice of Jacob. It is hard to comprehend how Senator O'Mahoney's suggestion that his former lawyer, Mr. Thurman Arnold, intervene in the Associated Transport case could have been the result, as the letter avows, of his reaction when he "heard of the application that a huge new merger bringing under a single control more than 24,000 miles of route operation." The facts are and the record will disclose that the information that the combined companies would have "24,000 miles

of route operation" was only developed by complicated studies and calculations made after the close of the hearing and as a result of the Examiner's request for such data, and this was many weeks after the Senator had allegedly been disturbed into action. Confronted with such a situation, it would be understandable if one were impelled to speculate on the possibility of other reasons for this sort of lend-lease aid of a senatorial toga and whether the intervention of the Division in the many other motor carrier matters during the past few months may be said to flow from this specific suggestion or, if not, what was the nature of the evidence examined by the Senator to prompt suggestions in those cases.

May we remind the Commission that in spite of the stream of abuse heaped upon the Examiner and his report, no one has nor

could have refuted any of the facts that the Examiner found. Apparently the attacks were and still continue to be, to draw a parallel, for which precedent has been established, based on the German propaganda principle, that any statement repeated often enough is accepted as the truth. May we invite the Commission's attention to the extraordinary number of appearances filed in this case after the conclusion of the testimony, and the significant nature and potential connections and possible mutual political or friendly interests of the opposition. Even the lone alleged "independent" witness produced by the Division, Theodore Brent, aside from his "property interest" as a competitor of the applicants, admitted under cross-examination that his advent into the case came about when he was visiting Washington in search of Government war contracts.

We feel it would be almost presumptuous on our part to indicate to the Commission the elementary differences between the language of the Motor Carrier Act and the Commission's interpretation of the Act as set forth in their decisions on the one hand and the interpretations of this Law or Congressional intent claimed by or for the Senator on the other hand. As did Assistant Attorney General Thurman Arnold, the Senator appears to be arguing that it was the intent of Congress that, to gain approval of a merger, motor carriers must affirmatively show that an application will "promote" rather than "be consistent with" the public interests and that "promote" means that no merger application can be granted unless without it there can be no "adequate" transportation in the territory (practically this would be to apply a test of "convenience and necessity") and that if there is no adequate transportation in the territory except through that which would be brought about through a merger, then a merger still cannot be approved because, being the only adequate transportation system, it would have a monopoly.

Repeated again in the Senator's letter is the characteristic philosophy of the Anti-Trust Division, "economy and efficiency of operation are primarily in the interests of the owners of the enterprise".

Did Congress not think it necessary and in the public interest when a few days ago it gave to the Commission authority to order joint use of terminals, garages, and other physical equipment? Certainly the applicant company could quickly and efficiently achieve the result now considered by Congress so necessary. Aside from the war emergency and the shortage of trucks, gasoline, tires, parts, and labor, it is not, to use the Division's words, "crystal clear" that the public interest requires the expedition of movements of freight, the reduction of operating costs, the prolongation of the life of equipment by scientific maintenance, the progressive de-

velopment of more suitable terminal facilities, the simplification of shipper relationships and billing and accounting procedure, the reduction of loss and damage to freight in transit, and the many other benefits and economies testified to by members of the shipping public during the progress of these proceedings?

Presumably one of the primary purposes for the establishment of the Interstate Commerce Commission in its present form was the promotion of a sound economical transportation system by motor trucks as well as by other forms of carriage, and the shipping and general public who pay the bills would be reluctant, we would expect, to learn that it was the intent of Congress to ban "economy and efficiency of operation" because the benefit of owning an economically and efficiently managed company must flow in some part to the owners of the business at the same time that it flows to the public in the form of stabilized or lowered rates and to prevent the achievement of those things which are necessary to guarantee perpetuation of continued service to the public in a hazardous economic future.

968 This approximates the consistency of the contention we so lately heard that the applicant companies are an "Interessengemeinschaft", amounting to a "Konzern", whose association, to carry out Mr. Arnold's "breach of promise" simile, should be deprived of the blessing of a marriage ceremony under the law and by the Commission but should rather be required "by agreement" to live together in sin so they may be prosecuted by the righteous crusaders of the Division (as for example, Consolidated Freightways), unless of course they will submit the regulation of their economic affairs to the consent decree processes of the Division instead of the Interstate Commerce Commission.

This application is before the Commission in great part because the operators involved know that truck lines, unlike the Government, cannot operate continually at a deficit and have been confronted many times in the past with the necessity of providing appropriations out of ever-deepening deficits and can appreciate the Senator's distress at such a necessity even more feelingly since the deficits with which they dealt were their personal ones and not those of the taxpayers. The ability of labor, through its organizations and particularly the International Teamsters' Union, to protect its members from even "minor detriment to employees" has been amply demonstrated. We are not optimistic that their efforts in that direction will be appreciably relaxed in the future. Should the alleged opinion of the Senator prevail over the Stated opinion of such a competent labor organization as the International Brotherhood of Teamsters, Chauffeurs and Helpers?

It is neither our desire nor purpose to enter into political controversy. For fifty-four years the Interstate Commerce Commis-

sion has had an outstanding record of according every issue in litigation consideration solely on its merits. Every right-thinking citizen must deplore, especially in these times, a philosophy of Government which would require expediency to dictate a necessity that meritorious applications be determined by a show of Legislators' hands in lieu of the unbiased judgment on the facts by constitutionally independent tribunals.

We thus finally submit our case with the respectful prayer  
969 that these truck companies, who have their entire economic futures at stake and whose public and private interests far transcend an intangible theoretical approach to an economic Utopia and whose genuine effort at most considerable expenditure of time and assets to translate into fact the expressed views of the Interstate Commerce Commission as they have read and understood them, shall not have pleaded their worthy cause in vain.

Respectfully yours,

ASSOCIATED TRANSPORT, INC.,  
By CLAUDE A. COCHRAN,  
HUGH M. JOSELOFF,  
MORTIMER A. SULLIVAN,

*Attorneys for Applicants.*  
1775 Broadway, New York City.

MAS: EG

We are enclosing copies of this letter for the members of the Commission and are sending a copy to the parties in the Associated Transport case and to:

Hon. Joseph C. O'Mahoney, United States Senate, Washington, D. C.; Hon. Henrik Shipstead, United States Senate, Washington, D. C.

[Copy].

FEBRUARY 26, 1942.

970 Mr. MORTIMER ALLEN SULLIVAN,

*Prudential Building, Buffalo, N. Y.*

DEAR MR. SULLIVAN: Receipt is acknowledged of twenty-five copies (mimeographed) of your letter of February 21, 1942, addressed to me, relative to Associated Transport, Inc.—Control and Consolidation—Arrow Carrier Corporation, et al—Docket No. MC-F-1612, and Associated Transport, Inc.—Issuance of Securities—Docket No. MC-F-1613.

I am today sending a copy of your letter to the members of this Commission.

Very truly yours,

(s) CLYDE B. AITCHISON,  
*Acting Chairman.*

971 [Report and order of I. C. C. Omitted. Printed side page. 10 ante.]

1021 Before the Interstate Commerce Commission

Docket MC-F-1612

ASSOCIATED TRANSPORT-INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL

Docket MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the Secretary of Agriculture, Intervener, for Rehear-  
ing, Reargument, and Reconsideration*

Filed April 10, 1942

Comes now your petitioner, the Secretary of Agriculture, inter-  
vener in the original proceedings, and respectfully requests re-  
hearing, reargument, and reconsideration in the cases captioned  
above, and for grounds of such request says:

1. The statement in the report of the Commission in its deci-  
sion of March 16, 1942, in the cases captioned above that "Prot-  
estant's application does not specify the particular railroad or  
railroads with which it is believed applicant would be affiliated  
as the result of the participation of Kuhn, Loeb and Company"  
indicates that, in the opinion of the Commission, the record is  
incomplete with respect to the relationship which will exist be-  
tween Kuhn, Loeb and Company and applicants.

1022 2. An examination has been made of the new evidence  
offered by the Anti-Trust Division of the Department of  
Justice in its petition of this date in the cases captioned above.

3. It is believed that the incorporation into the record of the  
new evidence, referred to above, will be persuasive of a decision  
contrary to that reached by the Commission in its order of March  
16, supra.

Wherefore, petitioner prays that the cases captioned above be  
reopened for the taking of evidence, and that the Commission  
reconsider them and grant reargument thereon.

Respectfully submitted,

By direction of the Secretary.

(signed) ROBERT H. SHIELDS,

*Solicitor, United States Department of Agriculture,*

*Washington, D. C.*

HASKELL DONOHO,

*Of Counsel,*

CHAS. B. BOWLING,

*In Charge, Transportation Section,*

*Transportation and Warehousing Branch,*

*Agricultural Marketing Administration.*

Dated at Washington, D. C. April 10, 1942.



1023

## CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by-mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 10th day of April 1942.

(signed) HASKELL DONOHO,

Senior Attorney, United States Department of Agriculture,  
Washington, D. C.

1024

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATED—ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the Antitrust Division, United States Department of Justice, for (1) Reopening and Rehearing; (2) Reargument and Reconsideration*

Filed April 10, 1942

Comes now the Antitrust Division, United States Department of Justice, party of record in these proceedings, and respectfully petitions the Commission (1) to reopen said proceedings for further hearing and (2) for reargument and reconsideration, and in support of said petition respectfully shows:

## I

That issues of general transportation importance are involved in said proceedings which necessitate the granting of this petition.

## II

1. The Commission in its report at pages 35 to 37 inclusive, under the subtitle "Railroad Relationship" states:

"Protestant's allegation does not specify the particular railroad or railroads with which it is believed applicant would be affiliated as a result of the participation of Kuhn, Loeb & Company."

As no pleadings were filed by interveners or protestants in these proceedings, other than motions to compel motor carriers, parties

to the merger, and others, to produce additional evidence in their possession, it is assumed that this reference is to statements made in argument on brief and orally before the Commission. If so, it seems clear that the only railroads with which applicant could be "affiliated" within the meaning of the statute as a result of the participation of Kuhn, Loeb & Company are The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company. And, despite the above statement of the Commission, this seems to be its view, for after finding the merger would result in Kuhn, Loeb & Company obtaining a substantial interest in applicant, the Commission adds:

"Kuhn, Loeb & Company is represented on the Board of Directors of several railroads operating outside of the territory here involved, and for many years it has been banker for The Baltimore and Ohio Railroad Company and The Pennsylvania Railroad Company, each of which operates in this territory." [Italics supplied.]

2. The only inference that could be drawn from the Commission's statement first above quoted is that it is not sufficiently informed on this record of the relationships between Kuhn, Loeb & Company and The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company to enable it (1) to determine the effect in these proceedings upon the public interest of such relationships or (2) to determine whether it is reasonable to believe that the affairs of applicant will, because of such relationships, be managed in the interest of either or both of these railroads and, if so, subject this transaction to the proviso of Section 5 (2) (b).

3. Petitioner undertook to prepare and present to the Commission facts material to a determination of the issue of restraint and monopoly in these proceedings from the public viewpoint. The time allotted for preparation, however, was too short and the several requests of petitioner for additional time was denied 1025 by the Examiner who presided at the hearing. (Tr. 13, 851, 858, 935, 940). While your petitioner believes that the Commission on this record is in a position to consider and determine the effect in these proceedings upon the public interest of the relationships of Kuhn, Loeb & Company above set forth, and whether this transaction because of such relationships falls within the proviso of Section 5 (2) (b), it is equally clear that had sufficient time been granted as requested by petitioner, additional facts could have been developed for this record which would have removed any uncertainty or doubt which the Commission may entertain in regard thereto.

4. At the rehearing prayed for herein petitioner will show and offer to prove by documentary evidence and by a series of concrete cases drawn from the files of The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, the records of the Interstate Commerce Committee and the Banking and Currency Committee of the United States Senate, the records of the Interstate Commerce Commission, and from other similar sources, the following facts:

(a) That Kuhn, Loeb & Company have been the principal bankers for the Pennsylvania Railroad System for over a half century and still act in that capacity.

(b) That the major financial transactions between Kuhn, Loeb & Company and the Pennsylvania Railroad System total in excess of \$1,300,000,000.

(c) That Kuhn, Loeb & Company participated in conferences and planning out of which was organized the Penroad Corporation designed to avoid the jurisdiction of the Interstate Commerce Commission and the provisions of the Clayton Antitrust Act; that the entire voting power of the stockholders of that corporation was vested in an officer and two directors of the Pennsylvania Railroad Company; and that the stated purpose of that corporation was "to invest its funds in securities of any corporation or other agency, including those engaged in transportation of any description on land or water or by air, but without power to operate railroads."

(d) That Kuhn, Loeb & Company participated in and negotiated purchases of stock in carriers for the Pennsylvania Railroad System.

(e) That the Pennsylvania Railroad Company through its wholly-owned subsidiary, American Contract and Trust Company, owns and operates common carriers of property by motor vehicle and today is the largest railroad owner and operator of such motor truck lines in the Nation.

(f) That the common carrier motor truck operations of the Pennsylvania Railroad Company through the American Contract and Trust Company parallel in part those of motor carriers, parties to the proposed merger in these proceedings.

(g) That Kuhn, Loeb & Company have been the principal bankers for The Baltimore and Ohio Railroad Company for over a half century.

(h) That Kuhn, Loeb & Company, with Speyer & Co., reorganized The Baltimore & Ohio Railroad Company and acted as reorganization managers.

(i) That Kuhn, Loeb & Company has underwritten and sold to the public large amounts of securities for The Baltimore and Ohio

Railroad Company and has participated in and negotiated the purchase of stock in carriers for that railroad.

(j) That The Baltimore and Ohio Railroad Company owns a substantial stock interest in a large common carrier of property by motor vehicle which is competitive in part with the motor carriers, parties to the merger.

(k) That even though Kuhn, Loeb & Company did not have as much as one (1%) percent stock interest in The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company they exercised powerful influence which was often a determining factor in the affairs of those railroads.

5. The taking of evidence as set forth in paragraph 4 will conclusively establish that the substantial financial interest which Kuhn, Loeb & Company would obtain in Associated Transport, Inc., would be contrary to the public interest. The reasons therefor can not be more clearly or concisely stated than in the dissenting opinion of Commissioner Patterson on the present record, as follows:

"The main purpose of Arrow inclusion appears to be the opportunity afforded a great banking institution to enter the vast motor carrier business which serves the nation. I cannot approve indirect participation by Kuhn, Loeb & Company as part owner of Associated Transport. The influence of such a financial power over the affairs of corporations, of which they own a part, is far beyond the proportion of stock held. Evils which have attended such participation in railroad transportation are well known. Section 5 of the Act was designed largely to avoid recurrence of such evils. The National Transportation Policy makes it a Commission responsibility to avoid dangers that may injure the transportation system which serves national commerce and defense. I regard part ownership of Associated Transport by Kuhn Loeb & Company as inimical to public interest and national welfare."

And, further, such evidence will conclusively establish that the instant transaction falls within the spirit and letter of the proviso of Section 5 (2), (b) in that the circumstances here present are such as to make it reasonable to believe that the affairs of Associated Transport, Inc., could and would be managed in the interest of The Pennsylvania Railroad Company and The Baltimore and Ohio Railroad Company.

### III

1. Since the hearings in these proceedings new evidence has been discovered which has a material bearing on the issues here involved and its inclusion in the record and consideration by the

Commission is essential to a proper disposition thereof. This evidence will show that the purpose and inevitable result of the proposed merger will be to restrict and restrain, through various means and devices, the ability of independent motor lines to function competitively to the merged lines, thereby assuring to Associated Transport, Inc., monopolistic control of the carriage of freight by motor vehicle along the Atlantic seaboard. This new evidence which petitioner will offer at the hearing prayed for herein will establish:

(a) That as a result of negotiations between representatives of Associated Transport, Inc., applicant herein, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, culminating in an agreement to unionize the operations of Associated Transport, Inc., independent small motor carriers also engaged in negotiations with that Union have been refused as favorable terms in their labor contracts.

The evidence will show that no Carolina Motor carrier had a union contract covering over-the-road operations prior to September 19, 1939. Shortly thereafter unionization of motor carriers in this territory was begun with the result that six small motor carriers are presently fully unionized. Contracts between these motor carriers and the Union expired in November 1941 and negotiations for renewal of the labor contracts of these carriers were begun concurrently. Following negotiations and mediation extending over a period of several months, an oral agreement was reached on or about January 17, 1942, between representatives of the Union and these motor carriers as to the terms of the new contracts. Prior to the presentation of the written contract for signature, however, the Union succeeded in reaching an agreement with representatives of Associated Transport, Inc., to unionize the operations of that company. As a consequence the Union's national and local representatives refused to enter into the contract agreed to on or about January 17, 1942, with the six independent small motor carriers and demanded that those carriers sign 1027 contracts providing for higher payments and containing much more onerous terms than those previously agreed to. The reasons advanced by the national representative of the Union was that "I have been talking to the 'big fish' in the merger. You won't get as good a contract as the merger."

The evidence will further show that the ability of the merged lines to thus compel a labor agreement more favorable to them than to small independent motor carriers will, because of the added burdens thereby imposed upon such carriers, so restrict and restrain them in their ability to function as carriers for hire that,



if they can continue to operate at all, all semblance of effective competition to the merged lines will be removed.

(b) That motor carrier lines, parties to the merger, have through concerted action carried on a systematic plan of opposition to applications before the Commission concerning operating authorities of small independent motor carriers, thereby unnecessarily prolonging such proceedings and imposing a heavy financial burden on such independent carriers in establishing their legal rights, which the merger, because of its greater financial strength and control of traffic, will intensify.

The evidence will show that since the inception of the plan and merger in the original Transport case, and continuing to the present time, Horton Motor Lines, Incorporated, Barnwell Brothers, Incorporated, and other carriers, parties to the merger, have systematically and concertedly opposed applications by small independent carriers for operating rights without regard to the competitive character of the operations sought to be certificated or the legal rights involved. In some cases, counsel for one carrier has represented other carriers, parties to the merger. In other cases, motor carriers, parties to the merger, have prevailed upon local interchange carriers dependent upon the carriers, parties to the merger, for interchange traffic to also appear and protest such applications, and for this purpose the facilities, records and employees of the motor carriers, parties to the merger, have been made available to the other protesting carriers. Procedural and other devices have been employed to delay and frustrate efforts by independent motor carriers to secure legal recognition of their operating rights or the extension thereof in the public interest. The resources of the small independent carriers have been so limited that in some instances the expense involved has been prohibitive. Concentration of financial power and control of traffic in Associated Transport, Inc., will increasingly intensify the burden of small independent motor carriers in their efforts through protracted proceedings to establish and maintain their legal rights.

(c) That Associated Transport, Inc., will, if allowed to consummate the proposed merger, be thereby enabled to control rates and private rate making machinery, to take arbitrary action in respect thereto, and thereby destroy independent action by independent motor carriers in the making of rates and charges to the public.

The evidence will show that Associated Transport, Inc., will, if the merger is consummated, control a large portion of a higher-rated freight moving out of the southern Atlantic seaboard area into the industrial north; that by reducing its rates on the low-rated freight it can force independent carriers to lower their rates cor-

respondingly and thus deprive them of revenues without material impairment of its own revenues; that certain members of the proposed merger through their control of key positions in motor carrier rate conferences have effective control over the making of rates and practices relating thereto; and that the merged lines will be in a position to exercise this combined control in such manner as to dictate rates and rate practices for the entire motor carrier industry in the affected area. The evidence will show that this situation can be developed in such manner as to avoid the jurisdiction of regulatory bodies since it will be the result of the present control of premium freight by carriers, parties to the merger, and since the adherence and support of local interchange carriers is now and will be secured in favor of the merged lines by reason of their control of interchange tonnage.

2. Petitioner submits that this new evidence is material to a determination of the vital issues in these proceedings for it will establish in this record the methods and means by which the consummation of the proposed giant merger will, contrary to the public interest, place in Associated Transport, Inc., monopolistic control over the entire motor carrier industry along the Atlantic seaboard.

#### IV

1. The far reaching effect upon the public interest of the Commission's decision in these proceedings impels petitioner to also respectfully seek reargument and reconsideration of the Commission's decision therein on the following grounds:

(a) The Commission has misinterpreted its powers under Section 5 of the Interstate Commerce Act and has failed to apply the proper criterion in reaching its conclusion.

(b) The Commission's findings as hereinafter set forth are not supported by law and the evidence in the case.

2. The interpretation of Section 5 of the Interstate Commerce Act as set forth at pages 17 and 18 of the Commission's decision is in effect a declaration that the letter and spirit of the antitrust laws have been repealed insofar as the Commission is concerned. This is so, the Commission holds, because transactions given its approval are under paragraph 11 of Section 5 relieved from the provisions of such laws. Hence, the Commission asserts, "Section 5 authorizes us to permit unifications which would except for such approval result in restraining competition contrary to the antitrust laws, where the disadvantages of such restraint are overcome by other advantages in the public interest, such as direct betterment in the public service of the carriers or indirect betterment through stabilization of the industry." This view, petitioner respectfully con-

tends, can only lead to regulated monopoly in the motor carrier field contrary to the express policy of Congress.

3. Petitioner submits that the spirit and letter of the antitrust laws have been written into the Interstate Commerce Act as indeed it has been written into many regulatory acts passed by Congress. It is only when the Commission has strictly observed and correctly followed the criteria laid down by Congress that paragraph 11 of Section 5 comes into play and then only "insofar as it may be necessary to enable them (parties to merger) to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission." Congress here assures such parties that such transactions could not then be attacked in any other forum.

The Commission also asserts:

"Determination of the larger question as to whether the proposed unification would be consistent with the public interest involves consideration not only of the competition that would be eliminated, but also of the competition that would remain and advantages that would result from the unification." (p. 18).

Here is seemingly an admission that the criterion laid down by Congress in the phrase "consistent with the public interest" requires a consideration of the degree of restraint which may result from the consummation of a given transaction for which Commission approval is sought. As a guide to the determination of whether such transaction would be "consistent with the public interest" Congress has specifically provided that the Commission should give consideration "to the effect of the proposed transaction upon adequate transportation service to the public." Considerations of economy or efficiency in operation referred to by the Commission under the heading "Competition" are guides which

1029 Congress in Section 5, paragraph 1 has specifically laid down only in the case of temporary arrangements which arise out of pooling or division of traffic, service or earnings. Economies in operation in merger and consolidation proceedings may be approved by the Commission, but not at a price which involves unreasonable restraint of competition. Competition in a real sense must be maintained.

4. The Commission considers at length motor truck operations outside the merger as related to segments of the existing operations of the individual carriers in the merger, and then finds:

"The foregoing clearly shows that if the proposed transaction is consummated, there would remain ample competitive motor carrier service throughout the territory involved," (p. 30).

5. This finding fails to meet the issue of fact on competition in these proceedings. What motor carrier competition will exist

for the proposed consolidated operations of the huge motor carrier here to be created? Following the above finding, and at pages 31 and 32, of its decision, the Commission seeks to meet this issue through argument and not a finding. Competition over segments of routes throughout the area is not competition for applicant whose operations would cover the Atlantic seaboard like a blanket. And reference to a Boston to New Orleans operation fails to deal with realities. The territory and traffic primarily here involved is the southern Atlantic seaboard area of the Carolinas and Georgia, extending to the industrial areas in the north. It is this operation which must be dealt with realistically and a finding made based upon substantial evidence. On this record the finding must be that if the proposed transaction is consummated there would remain no motor carrier service throughout this territory truly competitive to that of Associated Transport, Inc.

6. The majority Commission decision finds under the heading "Benefits of the Proposed Unification" that the merger "would result in improved transportation service, \* \* \*" and "would result in substantial operating economies," (p. 12). The evidence in support thereof consists of claims similar to those made in the first merger proceeding in Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, wherein the Commission said:

"In the absence of evidence that similar consolidations or expansions of operations on such a large scale have produced results anticipated by applicant, the testimony with respect to proposed economies and improvements in service is not convincing."

7. There is no evidence in this record which supports a reversal of this finding. Commissioner Splawn in his dissenting opinion prefaces reference to this previous finding of the Commission with the following statement:

"The alleged opportunities for economy are vague and speculative, and the same general statement could probably be made with respect to any proposed consolidation," (p. 50).

8. The effect of the proposed merger will be to trade the known public benefits generated through existing competition (which the Commission finds to be substantial) for future promises. Moreover, the trade is to be made without an appraisal or evaluation by the Commission of the public benefits and economies which this substantial competition has produced. Such a one-sided trade is not in the public interest and cannot meet the criteria laid down by Congress. The value of the promised benefits resulting from the vast power here to be concentrated, criteria aside, is in no way commensurate with the value to the public of the substantial competition which would be eliminated by the merger. This, then, poses the ultimate question: Shall commerce moving over our public highways by carriers for hire be turned over to a few huge cor-

porations for their private gain or shall the public which owns the highways enjoy the benefits of competition between such carriers?

1030 Wherefore, the Antitrust Division, United States Department of Justice prays, that:

(1) the Commission reopen said proceedings for the purpose of taking testimony as set forth in Sections II and III hereof, and

(2) that reargument and reconsideration be had on the matters set forth in Section IV hereof, to the end that the vital public issues involved in these proceedings may be determined upon a complete record, and that due consideration be had of the legal and factual issues based thereon, and that the Commission issue such further order or orders in the premises as to it may seem reasonable and just.

Respectfully submitted.

(Signed) ARNE C. WIPRUD,

(Signed) FRANK COLEMAN,

(Signed) SMITH R. BRITTINGHAM, Jr.,

(Signed) WILLIAM R. KUEFFNER,

*Special Assistants to the Attorney General.*

(Signed) DAVID G. MACDONALD,

*Special Attorney.*

By Direction of:

THURMAN ARNOLD,

*Assistant Attorney General.*

Dated at Washington, D. C., April 9, 1942.

1031

#### CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 10th day of April 1942.

(Signed) A. C. WIPRUD.



1032 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the National Grange (1) for reopening and rehearing; (2) for reargument and reconsideration*

Filed April 10, 1942

Comes now your petitioner, The National Grange, party of record in these proceedings, and respectfully petitions the Commission (1) to reopen said proceedings for further hearing and (2) for reargument and reconsideration of the important national issues present, and in support of said petition says:

## I

That The National Grange, a corporation with principal offices at 1343 H Street NW., Washington, D. C., is a general farm organization with membership in 37 states approximating 800,000 members.

## II

That the purpose and function of The National Grange is to promote the interests of its members in agriculture, including the maintenance of low cost transportation for farm products and farm supplies and to that end to support the national policy of competition in the transportation industry.

1033

## III

That approximately 300,000 members of The National Grange are located in the Atlantic Seaboard and southern territory served by carriers parties to the above-captioned application, or their competitors and will be directly affected by any changes in rates, practices, operating policies or industrial conditions leading thereto.

## IV

That it is the belief of The National Grange that the creation of this motor carrier by merger of eight of the largest common carriers by motor vehicle in the affected area, together with recapitalization and issuance of securities to the public, and including, as it does, a substantial stock holding by a banking and

investment house with an established history of railroad affiliation, will prevent the maintenance of free competition in the transportation industry and will consequently be inimical to the public interest.

## V

That the report of the Commission approving the proposed merger contains findings of fact and law based upon insufficient evidence and founded upon an improper interpretation of the policy and provisions of the Transportation Act of 1940; and for the purpose of specific allegation and argument the National Grange hereby adopts and incorporates therein the Petition for Rehearing and Petition for Reconsideration filed by the Antitrust Division of the Department of Justice on April 9, 1942.

Wherefore The National Grange prays that the Commission reopen said proceeding and assign it for further hearing and that reargument and reconsideration be granted.

THE NATIONAL GRANGE,  
By (Signed) FRED BRECKMAN,  
*Washington Representative.*

Dated at Washington, D. C., April 9, 1942.

1034

## CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 9th day of April 1942.

FRED BRECKMAN.

1035

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Reply to petition of the Antitrust Division, United States Department of Justice, the National Grange, and the Secretary of Agriculture, for (1) Reopening and Rehearing; (2) Reargument and Reconsideration.*

Filed April 17, 1942

Notwithstanding the total insufficiencies of the matters contained in the petitions, even if true, to warrant the reopening of this case,

for the sake of the record Associated Transport, Inc., the respondent in these proceedings, respectfully replies to the above petitions as follows:<sup>1</sup>

## I

That the issues of general transportation importance involved in these proceedings are such as to necessitate the immediate denial of this petition.

## II

In view of the fact that Associated Transport, Inc. has been notified by the Transport Company of the Transport Company's decision not to acquire Arrow Carrier Corporation, and since, therefore, Associated Transport cannot acquire the Arrow stock, there could be no purpose in discussing the matters contained in paragraph II of the Department of Justice's petition.

## III

1036 The transpiration of the facts referred to above would seem to have dissipated the twin vampires of banker-railroad domination and monopoly but the pot continues to boil, the incantations still sound forth, and the awful spectacle of a Labor-Industry conspiracy and collusion forms in the steaming clouds above the brew.

Somewhere there must be reasonable limits beyond which performances of this sort may not be carried. At the inception of the proceedings, partially lulled by the apparent fairness of the original expressions of intention and attitude of the Antitrust Division's letter of August 15th, 1941, through which they sought to intervene, we refrained from raising objections to the propriety of such intervention. Later, when the nature and character of the attacks on the application assumed the proportions of a persecution, we contented ourselves with reliance upon the Commission's history and reputation for equity and fairplay, and the forthright nature of the decision in this matter has removed any natural fears that your Honorable Body can be confused by sleight of hand logic even in its most devious forms. Only regretting as citizens that a branch of the Government, called "Justice," can feel that hints, suggestions and innuendoes, calculated to arouse curiosity and create uncertainty and confusion, are honest substitutes for plain statements of fact in what amounts to an indictment of Associated's conduct, purposes and intentions, we reiterate our confidence that the Commission will speedily afford to this petition the shrift it so well deserves.

<sup>1</sup> Since petitions of the National Grange and the Secretary of Agriculture are in the nature of a "second" to the motion of the Department of Justice, this reply will not specifically refer farther to their petitions.

A. The Associated Transport, Inc., has no intention or desire to commit economic suicide. It recognizes and proclaims the obvious fact that its future welfare is inevitably and unseverably an integral part of the motor trucking industry, and that only through cooperation, understanding and mutual trust on the part of carriers, large and small, whether in communities large or small, can there be a workable balance of power between employers and unions.

Associated Transport is bound by, and intends to abide fully with, the provisions of the National Labor Relations Act in its relationship to its employees. Because the overwhelming majority of the employees of its constituent companies are members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, it announced its desire to negotiate a contract with the International Covering contingent displacements, transfers or hardships to employees as a result of the merger, rather than encountering the possibility of fixed conditions being imposed by the Commission in these changing times. In conversations had between the International and representatives of Associated weeks prior to the January 17th date referred to by the Antitrust Division, it was found that such desires were reciprocated by the International. We submit that such a meeting of the minds was and is to the great credit of both parties and potentially an important forward step and precedent in any future merger cases of motor carriers.

Associated's offer and intentions were definitely and fairly set forth and disclosed to the Commission and to the world in a prepared statement on that subject read into the record on Oral Argument.

The acquiescence in and acceptance by Labor of this offer was understood as fully and fairly set forth in the prepared statement which was read into the record on Oral Argument by their representatives.

1038 Associated has no agreement, express or implied, existent or contemplated, under which it could obtain "less onerous" terms from the International than any other operator so situated in any part of its territory. Furthermore, Associated has no desire to nor will it enter into such an agreement.

Perhaps many useful purposes will be served by taking this opportunity publicly to state that it is and will be the policy of Associated that:

(1) Associated's labor contracts in each community will be and must be negotiated separately with the appropriate Local of more than one hundred Local Unions having jurisdiction over its employees.

(2) Associated has not entered and will not enter into any contract more favorable to itself than the contracts of other operators performing similar work in a given community covered by such contract.

(3) Associated will, in the interests of the Country, the Industry, its employees, and itself, join with and seek the aid of all Operators, Union officials, the Rank and File of Labor, the Anti-trust Division, or anyone else, in a constant effort to correct and eliminate improper terms, conditions or persons from hindering or interfering in any way with the orderly and proper progress and future of the Trucking Industry.

(4) Associated does not and will not have any objection whatsoever to filing complete copies of any and all Labor contracts into which it enters with the Interstate Commerce Commission at any time the Commission may so desire or order.

B. Associated flatly affirms<sup>6</sup> that the motor carrier lines party to this merger have at no time had any plan (systematic or otherwise) of opposition to applications before the Commission concerning operating authorities of small independent motor carriers, and that whatever opposition has been offered in any 1039 case by any of the companies has been the result solely of the individual policies of such companies in the protection of their own business from what they believed to be efforts on the part of other carriers to obtain unwarranted rights, and that such individual policies were formulated by the individual carriers as far back as 1936, long prior to their being involved in the Transport application or any other application for merger. Illustrative of the fact that opposition to cases involving operating rights depends upon local conditions, the nature of the applications, and individual company policy, is the fact that examination of the records in the Commission's file would disclose that two of the larger carriers in the merger have opposed practically no cases of other operators. While it may be true that counsel for the Transport Company (applicant in a prior and different proceeding), because of the nature of his practice, represented protesting carriers in opposition to various then and subsequently pending cases, Associated cannot and should not be held responsible for such activity. Associated, up to the time of the acquisition of the stock of its constituent companies, does not and could not control the individual companies or the private practice of the lawyers who may have represented such individual companies. Certainly there can be no question but what the protests and opposition of other carriers, large and small, as well as the railroads, have been directed and concerted to the greatest degree against the constituent companies of Associated from 1936 on. We are not in a position to state whether it is railroad-truck opposition or the slowness



of administrative processes, delayed by lack of sufficient personnel and funds, which has in some cases retarded final determination of operating rights for so long.

We could hardly be expected to refrain from observing  
1040 in passing that perhaps it is the Conscience of the Antitrust

Division that is so ready to deplore the use of "procedural and other devices \* \* \* to delay and frustrate efforts \* \* \* to secure legal recognition of \* \* \* rights \* \* \* in the public interest." Expense, it appears, is always prohibitive except when it can be paid from taxpayers' money, and, in this case, our "efforts through protracted proceedings to establish and maintain" legal rights have certainly been "intensified" and apparently endless.

The suggestion that local interchange carriers have been bludgeoned into appearing and protesting applications of "small independent carriers," or else they would not have appeared, overlooks or discounts the obvious fact that such interchange carriers have the same proportionate financial interest as the large over-the-road carrier would have in preventing unnecessary and improper increase in competition, since the protested proposed competition must be for the same freight which both the larger carrier and the interchange carrier handle together. On this subject, we have previously, during this proceeding, felt required to comment on "the significant nature and potential connections and possible mutual or friendly interests of the opposition." Considering the "me too" nature of all of the documents submitted by the Office of the Secretary of Agriculture and the National Grange, one finds the Department of Justice's abhorrence of mutual use of "facilities, records and employees" extremely interesting. In any event, and even if the untrue accusation of the Antitrust Division on the subject of opposition to carriers had been a concerted scheme of the constituent companies of Associated Transport, we would be doubtful that the effectiveness of future opposition in such cases by Associated would be as great as that of these individual companies, particularly in the light of the illusion that must  
1041 have been partially created that this is a "huge merger."

C. There is nothing contained in III-1-(c) of the Department of Justice's petition which would seem to require any extended reply. Passing over, as we have in discussing (a) and (b), the Department's disdain of the Commission's reasonable rule requiring explanations as to why alleged "new evidence" could not have been discovered before, the freight which Associated Transport will move is the same freight which the constituent companies have moved for years. The Commission has full control over the upward or downward revision of rates. The rate bureaus are under and subject to the Commission's control. Because in Rate

Bureaus the votes of the majority of operating members control, and because the present number of Associated Constituent Companies' votes will be reduced to one in the Bureau, there is considerably more danger that the rate bureaus will dominate Associated than that Associated will dominate the rate bureaus. The subject of interchange carriers throughout the proceedings was exhaustingly explored by the Antitrust Division to the extent of unduly prolonging the hearings in this case. Indeed, we recall their expressed warnings to the Commission that, if the merger was approved, interchange carriers would receive no business from Associated. Now, it is claimed that Associated will give them so much business that it will own these interchange carriers Body and Soul. As we suggested in an earlier brief, too much time has already been consumed attempting to meet "flights of fancy and speculations wholly without basis in fact."

#### IV

Paragraph IV of the Antitrust Division's petition seems to reiterate the concepts of the Antitrust laws peculiar to its "property rights" as the paid Shepherd of the Antitrust sheep. 1042 These concepts, as we understand them, may be syllogized as follows:

(1) All unreasonable restraint of competition is forbidden by the Antitrust laws.

(2) All restraint of competition is unreasonable.

(3) Any reduction of competition is a restraint of competition.

Therefore any reduction of competition is an unreasonable restraint of competition.

Such "occupational" myopia, which blacks out any conception that Congress could have recognized reasonable restraints of competition in the public interest, must be the necessity for the marvelous non sequitur of Subdivision 3 of Paragraph IV of the petition to the effect that Paragraph 11 of Section 5 of the Interstate Commerce Act was written into the law solely to guaranty to parties to a merger that after the Commission (as they say it must) has found there was absolutely no reduction of competition this finding would be res adjudicata to prevent the Antitrust Division or anyone else from claiming in some other forum that there was a reduction of competition. While the acceptance of such reasoning would no doubt greatly simplify findings of fact and conclusions of law in merger cases by eliminating all but purely end to end combinations, it is hardly to be expected that the Interstate Commerce Commission should be required to accept such a ridiculous emasculation of its powers and of a law which it is charged to enforce to the end of developing and preserving a National

Transportation System to meet the needs of commerce and the National Defense.

Turning to the petition's discussion of "Benefits of the Proposed Unification," we find quoted, with favor, certain language from Transport Co.—Control—Arrow Carrier Corp., 36 M. C. C. 61, wherein the Commission said:

"In the absence of evidence that similar consolidations or expansions of operations on such a large scale have produced results anticipated by applicant, the testimony with respect to proposed economies and improvements in service is not convincing."

1043 Because Mr. Thurman Arnold, by whose direction this petition was submitted, taught so long and until so recently at the Yale Law School, it is interesting to note the comment of the Yale Law Journal, Volume 50, Page 1378, in the Issue of June 1941, with respect to this particular language. After characterizing the conclusion contained in the language as "cavalier", this leading article continued:

"Strictly interpreted and carefully observed, this dogmatism would bar unifications upon a scale more extensive than those now being successfully operated. Skepticism of optimistic estimates of economies is understandable, especially since expansions by Keeshin Transcontinental Freight Lines had portended similar savings which failed to materialize.<sup>2</sup> But to substitute for articulate analysis a rule of thumb which, if consistently applied, would freeze motor carrier operation at its present level is hardly understandable."

### V

It was with deep regret that the operators here involved learned from the Commission's opinion and the dissents thereto that apparently Associated's position with respect to the negligible precious metal contract operation of McCarthy Freight Lines was apparently not clearly spread upon the record during the hearings. Associated has no particular brief for that operation and sought its continuance solely as a convenience to the customer by whom it is utilized and because it seemed in no wise to conflict with other operations. However, since the decision apparently reserves to the Commission for future determination the question of  
1044 continuance of this operation, no harm has been done. Associated hereby agrees to discontinue the operation at any time the Commission may desire.

<sup>2</sup> It was and is the claim of Associated that the Keeshin expansion was badly conceived in that the operations were spread too thin and lacked sufficient overlapping or potential elimination of duplications to permit opportunities for substantial economies. The Antitrust Division, by attempting to forbid reasonable restraint of competition, would deprive Associated of what the operators believe, from their experience and studies, to be one of the most important and essential elements of a successful expansion. The other elements of course are management, purchasing power, financing, and proper territorial coverage. The Keeshin expansion may be said to have been deficient in everything but financing.

## VI

After lengthy and full consideration, the Commission rendered its considered decision in these proceedings.

The management of Associated Transport and its constituent companies deeply realize that the United States of America is engaged in a terrible war and that for years to come they must be concerned, to the exclusion of all else, with the preservation of their Industry, the prolongation of the life of their equipment, with what to use for tires and how to get gasoline in their efforts to contribute transportation to the country's defense, and last but not least, with the responsibility to the Interstate Commerce Commission and to their stockholders to prove that the trust which has been placed in their opinions and promises was not in vain so that this merger may truly be, as "Time" magazine said, "one of the good things to come out of the war."

## VII

That the undivided efforts of Associated Transport may be entirely devoted to its public purpose of providing safe, adequate and economical transportation, especially in these times, the petition of the Department of Justice, Antitrust Division, and the corollary petitions of the Secretary of Agriculture and the National Grange should be denied forthwith.

Respectfully submitted.

CLAUDE A. COCHRAN,

HUGH M. JOSELOFF,

(Signed) MORTIMER A. SULLIVAN,

*For Associated Transport Inc.,*

*1775 Broadway, New York City.*

Dated at New York, N. Y., April 15th, 1942.

1045

## CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at New York, N. Y., this 17 day of April 1942.

B. D. RYAN

## Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

## Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the American Farm Bureau Federation (1) for leave  
to intervene; (2) for rehearing and reconsideration*

Filed April 22, 1942

Comes now your petitioner, the American Farm Bureau Federation, on its own behalf and on behalf of its member organizations, and (1) represents that it has an interest in the above-entitled proceedings and desires to intervene in and become a party to said proceeding, and (2) respectfully petitions the Commission to reopen said proceedings for further hearing and reconsideration of the important national issues present, and for grounds in support of said petition says:

## I

That the American Farm Bureau Federation, with principal offices at 58 East Washington Street, Chicago, Illinois, is an association of farmers in forty states.

## II

That the purpose and function of the American Farm Bureau Federation, among others, is to promote the interests of its members in the maintenance of low cost transportation for farm products and farm supplies and to that end to support the national policy of competition in the transportation industry.

## III

That many of the members of the American Farm Bureau Federation are located in the Atlantic Seaboard and southern territory served by carriers parties to the above-captioned application, are served by them or their competitors and will be directly affected by any change in rates, practices, operating policies, or industrial conditions leading thereto.



## IV

That it is the belief of the American Farm Bureau Federation that the creation of this huge motor carrier by merger of eight of the largest common carriers by motor vehicle in the affected area, together with recapitalization and issuance of securities to the public, and including, as it does, a substantial stock holding by a banking and investment house with an established history of railroad affiliation, will prevent the maintenance of free competition in the transportation industry and will consequently be inimical to the public interest.

1048

## V

That the report of the Commission approving the proposed merger contains findings of fact and law based upon insufficient evidence and founded upon improper interpretation of the policy and provisions of the Transportation Act of 1940 and for that purpose of specific allegation and argument the American Farm Bureau Federation hereby adopts and incorporates herein the Petition for Rehearing and Petition for Reconsideration filed by the Antitrust Division of the Department of Justice on April 9, 1942.

Wherefore the American Farm Bureau Federation prays leave to intervene in and become a party hereto with the right to have notice of and be heard by counsel or other authorized representative, at any further hearing, on brief and at any oral argument which may be granted; and prays that the Commission reopen said proceeding and assign it for further hearing and for reconsideration.

AMERICAN FARM BUREAU FEDERATION,

By: DONALD KIRKPATRICK,  
Donald Kirkpatrick,

*General Counsel.*

Dated at Chicago, Illinois, April 8, 1942.

1049

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

*Petition of the Virginia State Horticultural Society, Inc., by W. S. Campfield, Secty.; West Virginia State Horticultural Society, by Carroll R. Miller, Secty.; Maryland State Horticultural So-*

*ciety, by A. F. Vierheller, Secty.; Berks-Lehigh Mountain Fruit Growers, Inc., by L. E. Newcomer, Mgr.; Appalachian Apple Service, Inc., by Carroll R. Miller, Secty.*

Filed April 22, 1942

Come now your petitioners, Virginia State Horticultural Society, West Virginia State Horticultural Society, Maryland State Horticultural Society, Berks-Lehigh Mountain Fruit Growers, Inc., and Appalachian Apple Service, Inc., parties of record in these proceedings and respectfully petition the Commission to reopen said proceedings for further hearing; for reargument and reconsideration of the highly important issues present which are, in fact, of nation-wide importance, and in support thereof said petitioners say:

## I

(a) That the Virginia State Horticultural Society, Inc., its principal office at Staunton, Virginia, represents a membership of approximately 1,000 apple and peach growers and shippers in Virginia.

1050 (b) That the West Virginia State Horticultural Society, its principal office at Martinsburg, West Virginia, represents approximately 337 apple and peach growers in West Virginia.

(c) That the Maryland State Horticultural Society, its principal office at College Park, Maryland, represents approximately 175 members.

(d) That the Berks-Lehigh Mountain Fruit Growers, Inc., its principal office at Boyertown, Pennsylvania, represents approximately 55 fruit growers of said counties.

(e) That Appalachian Apple Service, Inc., its principal office at Martinsburg, West Virginia, represents approximately 501 apple and peach growers of Virginia, West Virginia, Maryland, and Pennsylvania.

That each of said above organizations was created and is maintained to promote the horticultural interests of their respective states and, among other things, to expand the distribution of the fruit of their members and encourage the maintenance of just, reasonable and nondiscriminatory freight rates and adequate transportation service by railroad as well as by highway.

## II

The above named organizations hereby urge the Commission to reopen said proceedings for the hearing of new evidence and for reargument and reconsideration because of the national impor-

tance of the issues involved, the decision of which will undoubtedly become a precedent to be followed in this formative period of a national policy toward highway transportation.

### III

That there is, in the past history of rail transportation, ample proof to justify the fear that the probable result of such an extensive merger as that proposed in these proceedings will lead to other giant trucking mergers that will ultimately cover the principal highways of the entire United States and develop sufficient political power and influence to greatly restrict and hamper the use of those public highways by smaller, independent commercial truck lines and private users.

### IV

That the granting of the proposed merger is not in the public interest and is not supported by the intent of Congress when the Transportation Act of 1940 was passed; and that such a merger would set in motion processes which, like the trend followed by the railroads, would ultimately lodge final control with selfish banking interests rather than with the much more efficient, practical, and experienced operating officials. The history and the present status of the railroads should stand as a danger signal to divert motor transportation from the pitfalls that they followed.

Therefore, we pray that the Commission reopen said proceedings and assign it for further hearing to consider new evidence and a reargument.

By (Signed) VIRGINIA STATE HORTICULTURAL SOCIETY,  
W. S. CAMPFIELD, *Secty.*

By WEST VIRGINIA STATE HORTICULTURAL SOCIETY,  
CARROLL R. MILLER, *Secty.*

By MARYLAND STATE HORTICULTURAL SOCIETY.,  
A. F. VIERHELLER, *Secty.*

By BERKS-LEHIGH MOUNTAIN FRUIT GROWERS, INC.,  
O. L. E. NEWCOMER, *Mgr.*

By APPALACHIAN APPLE SERVICE, INC.,  
CARROLL R. MILLER, *Secty.*

Dated at Staunton, Virginia, April 16, 1942.

1052

## CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Staunton, Virginia, this 16th day of April, 1942.

(Signed) W. S. CAMPFIELD.

1052-A

## ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 22nd day of April, A. D., 1942

No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

No. MC-F-1613

## ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

Upon consideration of the record in the above-entitled proceedings and of petitions of the Antitrust Division of the Department of Justice, The Secretary of Agriculture, The National Grange, Virginia State Horticultural Society, Inc., West Virginia State Horticultural Society, Maryland State Horticultural Society (including petition for leave to intervene), Berks-Lehigh Mountain Fruit Growers, Inc., Appalachian Apple Service, Inc., and the American Farm Bureau Federation (including petition for leave to intervene), for reopening, rehearing, reargument, and reconsideration by the Commission of its decision, entered March 16, 1942, in said proceedings, and good cause therefor appearing:

It is ordered, That said petitions be, and they are hereby, denied.  
By the Commission.

(SEAL)

W. P. BARTEL,  
*Secretary.*

1053 [Petition of Associated Transport, Inc., for conforming the order of March 16, 1942, of the Interstate Commerce Commission omitted. Printed side page. 84 ante.]

1057 [Order of I. C. C., June 8, 1942, Omitted. Printed side page. 88 ante.]

1

*Plaintiff's Exhibit 2*

Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

Washington, D. C., Monday, August 18, 1941.

Met, pursuant to notice, at 10 o'clock a. m.

Before VERNON V. BAKER, Examiner.

Appearances: C. A. Cochran, Law Building, Charlotte, N. C., appearing for Associated Transport, Inc. Hugh M. Joseloff, 410 Asylum Street, Hartford, Conn., appearing for Associated Transport, Inc. Mortimer Allen Sullivan, Prudential Building, Buffalo, N. Y., appearing for Associated Transport, Inc. J. D. Lawson, P. O. Drawer 540, Charlotte, N. C., appearing for Horton Motor Lines, Inc. Fred A. Tobin, 932 Bowen Building, 815 Fifteenth Street, NW., Washington, D. C., appearing for International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Warren Woods (Roberts & McInnis), 735 Transportation Building, Washington, D. C., appearing for Andrew B. Crichton et al., doing business as Super Service Motor Freight Company. John M. Miller, First National Bank Building, Kingsport, Tenn., appearing for The Mason and Dixon Lines, Incorporated, Kingsport, Tenn., Akers Motor Lines, Gastonia, N. C., Atlanta-Union Point Trucking Company, Inc., Greensboro, Ga., Benton Rapid Express, Savannah, Ga., Blue Ridge Trucking Company, Asheville, N. C., Cedartown-Atlanta Freight Line, Cedartown, Ga., Cumberland Freight Lines, Inc., Nashville, Tenn., Dixie Freight Lines, Atlanta, Ga., J. D. Jordan Truck Line, Centre, Ala., Lewis & Holmes Motor Freight Corporation, High Point, N. C., Mathews Freight Lines, Inc., Thomaston, Ga., New South Express Lines, Inc., Columbia, S. C., R.-C. Motor Lines, Inc., Jacksonville, Fla., Smith Transfer Corporation, Lenoir, N. C., Southern Motor Express, Birmingham, Ala., Wilson Truck Company, Nashville, Tenn., A. A. A. Highway Express,



Inc., Atlanta, Ga., Great Southern Trucking Company, Jacksonville, Fla., Booze Truck Lines, Roanoke, Va., Colonial Motor Freight Line, High Point, N. C. Charles J. Fagg, 24 Branford Place, Newark, N. J., appearing for Middle Atlantic Shippers Motor Carrier Committee, Newark Chamber of Commerce.

3 W. G. Burnette, 209 Lynch Building, Lynchburg, Va., appearing for Chamber of Commerce. Floyd F. Shields, 221 West Roosevelt Road, Chicago, Ill., appearing for Keeshin Freight Lines, Inc., Keeshin Motor Express Company, Inc., Seaboard Freight Lines, Incorporated. Arne C. Wiprud and Smith R. Brittingham, Jr., Special Assistants to the U. S. Attorney General, 3311 Department of Justice Building, Washington, D. C., appearing for Antitrust Division, Department of Justice, Washington, D. C. Joseph W. Connolly, No. 1 Franklin Street, Alexandria, Va., Ford Motor Company. James D. Mann, 450 Munsey Building, Washington, D. C., appearing for The National Industrial Traffic League.

5

### *Proceedings*

**Exam. BAKER.** Come to order, please.

The Interstate Commerce Commission has set for hearing at this time and place the following applications:

No. MC-F-1612, being the application of Associated Transport, Inc., for authority, under section 5 of the Interstate Commerce Act, to acquire control of the ownership of the stock, and thereafter to consolidate into itself the properties of Arrow Carrier Corporation, Barnwell Brothers, Inc., Consolidated Motor Lines, Inc., Horton Motor Lines, Inc., McCarthy Freight System, Inc., M. Moran Transportation Lines, Inc., Southeastern Motor Lines, Inc., and Transportation, Inc.

The second application, No. MC-F-1613, being the application of Associated Transport, Inc., for authority, under section 214 of the Interstate Commerce Act, to issue securities.

Off the record, now, Mr. Reporter.

(Statement by the Examiner off the record.)

**Exam. BAKER.** I will next call for appearances. In entering your appearances, please state your full name and address, whether you are a registered practitioner before this Commission, the party whom you represent, the position which you propose to take in this proceeding, and your interest therein. I will first call for appearances for the applicant.

**Mr. COCHRAN:** C. A. Cochran, Law Building, Charlotte, N. C., appearing for Associated Transport, Inc., applicant.

6 **Mr. JOSELOFF.** Hugh M. Joseloff, 410 Asylum Street, Hartford, Conn., appearing for Applicant. I am a registered practitioner.

Exam. BAKER. Mr. Cochran, are you a registered practitioner?

Mr. COCHRAN. I am.

Mr. SULLIVAN. Mortimer Allen Sullivan, Prudential Building, Buffalo, N. Y., appearing for the applicant. I am a registered practitioner.

Exam. BAKER. Are there any appearances for intervenors in support of the application?

Mr. LAWSON. J. D. Lawson, P. O. Drawer 540, Charlotte, N. C., appearing for Horton Motor Lines, Inc., supporting the application. I am a registered practitioner.

Exam. BAKER. Are there any appearances for protestants?

Mr. TOBIN. Fred A. Tobin, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, 932 Bowen Building, Washington, D. C. I am a registered practitioner. I also wish to note the appearance of Mr. Joseph A. Padway, general counsel of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

Exam. BAKER. Mr. Tobin, are you entering your appearance as a protestant in opposition to the application?

7 Mr. TOBIN. That is right.

Exam. BAKER. Is Mr. Padway present?

Mr. TOBIN. No; he is not present, but he will be in here shortly.

Exam. BAKER. Well, will you have him enter his appearance personally when he arrives?

Mr. TOBIN. Yes, Sir.

Exam. BAKER. Are there any further appearances for protestants?

Mr. WOODS. Warren Woods, 735 Transportation Building, Washington, D. C., I am not a registered practitioner, but I am an applicant for admission to the bar of the Interstate Commerce Commission. I am with Roberts & McInnis.

Exam. BAKER. Have you appeared in any other proceedings before the Interstate Commerce Commission, Mr. Woods?

Mr. WOODS. I appeared in one proceeding, in Jackson, Miss. My application has been in since early June of this year.

Exam. BAKER. When was that other proceeding held?

Mr. WOODS. The other proceeding started on June 23d.

Exam. BAKER. Of this year?

Mr. WOODS. That is correct. It is not yet concluded, however.

Exam. BAKER. Mr. Woods, it will be necessary that you  
8 secure special permission from the Secretary to participate in this proceeding. I suggest that you contact the Secretary's office, which is on the second floor of this building.

Mr. WOODS. Very well. May I state the interests which we represent?

Exam. BAKER. Yes.

**Mr. Woods.** We are representing, as a protestant and intervenor here, the Super Service Motor Freight Company, a partnership composed of Andrew B. Crichton et al., doing business under the name of Super Service Motor Freight Company.

**Exam. BAKER.** Very well.

**Mr. Woods.** With offices in Nashville; Tenn. It is a participating carrier, competitive with certain carriers involved in this application.

**Exam. BAKER.** Very well, Mr. Wood. I would suggest that you immediately contact the Secretary's office.

**Mr. Woods.** I will do that immediately.

**Exam. BAKER.** Are there any further appearances for protestants?

**Mr. MILLER.** I would like to enter my appearance, Mr. Examiner—John M. Miller, and that of J. B. Dempsey, First National Bank Building, Kingsport, Tenn., representing the Mason & Dixon Lines, Inc., Kingsport, Tenn., and other carriers. We are intervening to protect our interests, wherever they may appear.

9 **Exam. BAKER.** Is Mr. Dempsey present in the hearing room?

**Mr. MILLER.** He will be here shortly.

**Exam. BAKER.** Will you have him enter his appearance when he arrives, please?

**Mr. MILLER.** All right, sir.

**Mr. SULLIVAN.** May we have in the record the names of the other carriers referred to, Mr. Examiner. I notice that he said "and other carriers."

**Exam. BAKER.** Will you please read the list of the carriers you represent, Mr. Miller?

**Mr. MILLER.** There are twenty of them: The Mason and Dixon Lines, Incorporated, Kingsport, Tenn.; Akers Motor Lines, Gastonia, N. C.; Atlanta-Union Point Trucking Company, Inc., Grennsboro, Ga.; Benton Rapid Express, Savannah, Ga.; Blue Ridge Trucking Company, Asheville, N. C.; Cedartown-Atlanta Freight Line, Cedartown, Ga.; Cumberland Freight Lines, Inc., Nashville, Tenn.; Dixie Freight Lines, Atlanta, Ga.; J. D. Jordan Truck Line, Centre, Ala.; Lewis & Holmes Motor Freight Corporation, High Point, N. C.; Mathews Freight Line, Inc., Thomaston, Ga.; New South Express Lines, Inc., Columbia, S. C.; R-C Motor Lines, Inc., Jacksonville, Fla.; Smith Transfer Corporation,

10 Lenoir, N. C.; Southern Motor Express, Birmingham, Ala.;

Wilson Truck Company, Nashville, Tenn.; A. A. A. Highway Express, Inc., Atlanta, Ga.; Great Southern Trucking Company, Jacksonville, Fla.; Booze Truck Line, Roanoke, Va.; Colonial Motor Freight Line, High Point, N. C.

Exam. BAKER. Mr. Miller, did you state whether you were a registered practitioner?

Mr. MILLER. I am.

Mr. SULLIVAN. Are we to understand, Mr. Examiner, that all of those are common carriers—certificated common carriers? I am asking that because the description would imply carrying performance other than the Mason & Dixon.

Exam. BAKER. Will you answer that, Mr. Miller?

Mr. MILLER. They are.

Exam. BAKER. Mr. Miller, has each of those carriers authorized your appearance of record here?

Mr. MILLER. They have.

Exam. BAKER. Are there any further appearances for protestants?

Mr. FAGG. Mr. Examiner, Charles J. Fagg, representing Middle Atlantic Shippers Motor Carrier Committee. Our position cannot be determined at this time. We are here to listen to the  
11 evidence and protect our interests as they may appear. I should also like to have the privilege, Mr. Examiner, if you will permit, to enter the appearance of William H. Ott as  
" representing the Middle Atlantic Shippers Motor Carrier Committee, Chicago, Ill. Mr. Ott had to be in San Francisco today, and cannot be here for three or four days. Both of us are practitioners before the Commission.

Exam. BAKER. We really do not permit the acceptance of an appearance in the absence of the party, Mr. Fagg. When Mr. Ott arrives we will be glad to have him enter his appearance at that time.

Mr. FAGG. Thank you, sir.

Exam. BAKER. Are there any appearances for other intervenors?

Mr. BURNETTE. W. G. Burnette, 209 Lynch Building, Lynchburg, Va., representing the Lynchburg Chamber of Commerce. I am a registered practitioner, and I am appearing in this proceeding to protect our interests wherever they may appear.

Mr. SHIELDS. Floyd F. Shields, 221 West Roosevelt Road, Chicago, Ill., appearing for Keeshin Freight Lines, Inc., Keeshin Motor Express Company, Inc., and Seaboard Freight Lines, Incorporated. The carriers that I have just named are common carriers, certificated under the Act. The first named is the holding company that owns the stock in the other two. They operate as common carriers substantially in the northern half  
12 of the territory involved in this application. I have been admitted to practice before this Commission.

Mr. WIPRUD. Smith R. Brittingham, Jr., and Arne C. Wiprud, special assistants to the Attorney General, representing the Anti-

Trust Division of the Department of Justice. I am admitted to practice before the Commission, but Mr. Brittingham is not. The position of the Antitrust Division of the Department of Justice is stated in a letter to the Commission, and upon which the Commission has entered its order, allowing leave to intervene.

Mr. Brittingham is present in the hearing room; is he not?

Mr. WIPRUD. He is present.

EXAM. BAKER. Mr. Brittingham, have you appeared in any other proceedings before the Commission?

Mr. BRITTINGHAM. No, sir; I have not.

EXAM. BAKER. Very well. You will be permitted to participate in this proceeding. For the benefit of any of the parties who may not have received a copy of the order of the Commission permitting intervention by the Department of Justice, which order was signed last Saturday, August 16th, I would like to read a paragraph of the letter which was referred to by Mr. Wiprud.

The letter is addressed to: Honorable Joseph B. Eastman, Chairman, Interstate Commerce Commission, Washington, D. C.

13 My dear Mr. Chairman:

"I understand that a hearing on the application of Associated Transport, Inc., for approval of a proposed unification of numerous motor truck carriers along the Atlantic Seaboard has been set for August 18, 1941. I would like to request that representatives of the Antitrust Division be given the privilege of appearing before your Commission and presenting evidence bearing on the question of whether the proposed unification unduly restrains competition in the transportation field.

The reason for my request is that jurisdiction to determine whether unification of carriers unduly restrains competition has been given to the Interstate Commerce Commission. The Antitrust Division is the only Government agency in a position to present evidence on the monopoly question from a point of view of the public interest. Evidence presented by private parties necessarily must be colored by their own property interests in the controversy."

The letter also requests that 30 days' time be given the Antitrust Division in order to furnish the Commission with evidence to complete its order. The order permitting intervention by the Antitrust Division did not grant such request. Whether or not the representatives of the Department of Justice plan to renew their request is a matter that will be developed in the course of the hearing.

14 Are there any further appearances?

In the interest of expediting the hearing on this application, Division 4 has directed that the application and accompanying exhibits shall constitute part of the record herein without



special admission or incorporation, but that this special rule shall not dispense with the necessity of proof of the facts alleged, if the facts are challenged by any opposing party.

In prior proceedings before this Commission, in Nos. MC-F-1223, 1244, and 1264, being applications of the Transport Company for authority to acquire control of certain motor carriers, including those here involved, there were filed copies of the articles of incorporation of each of the carriers involved in this proceeding.

May it be stipulated that such articles of incorporation, with the amendments filed in those dockets, may be incorporated in this record by reference?

MR. COCHRAN. We would like to have that done, sir.

EXAM. BAKER. Is there any objection to that?

Such documents will be so incorporated.

Applicant's counsel will be expected during the course of the hearing to develop whether or ~~not~~ there have been any amendments to such articles since the ~~date~~ of the hearing in the prior proceeding, and, if so, to introduce such copies of the amendments into this record.

15 At the conclusion of the hearing the parties will be requested to indicate whether or not they desire a proposed report by the Examiner. The announcement is made at this time in order that consideration may be given to it throughout the course of the hearing. If any of the parties present at this time depart the hearing prior to the close, unless they indicate otherwise, it will be taken that they consent to any agreement that may be reached at the close of the hearing by the parties then present, with respect to the proposed report.

The applicant may proceed.

MR. COCHRAN. Mr. Examiner, in order that you may understand what we have in mind as to procedure, I would like to state that our first witness will be Mr. Horton, who will confine his testimony to the organization of the applicant and the facts set out in the application, but with reference to the applicant specifically. He will be followed by Mr. Seymour, who executed the contract, and thereafter we will take up the individual companies and present such evidence as may be necessary to complete the picture. As to just the order in which those companies will come on, I am not quite able to state at this time, but on account of certain persons who are connected with those companies having business engagements or other engagements that are very pressing, it may be that we will rearrange the order presenting our evidence; but during today or tomorrow we will let you know exactly

16 —how we will proceed.

I would like at this point to have Mr. Horton come around and take the stand.

H. D. HORTON, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name and place of business, Mr. Horton.

A. H. D. Horton, Charlotte, N. C.

Q. Mr. Horton, what are your present business connections?

A. I am president and chairman of the board of Horton Motor Lines, Inc., chairman of the board of Conger Realty Company, Inc., and chairman of the board of Brown Equipment & Manufacturing Company, Inc., all of Charlotte, N. C.

Q. What position do you hold with respect to Associated Transport, Inc., the applicant in this hearing?

A. I am chairman of the board.

Q. Are you a director of that company?

A. And a director; yes.

Q. Mr. Horton, what has been your business experience?

A. From 1914 to 1918 I was in the retail and wholesale tire, battery, and accessories business. In 1928 I became operating receiver of B. F. Withers, Jr., Inc., a contract carrier operation serving the A. & P. Tea Company in the Carolinas. After a  
17 little more than two years I paid out this receivership and bought the operation, and continued to conduct that operation for several years, until it was sold in 1939. In 1931, I started a common carrier operation from North Carolina to Philadelphia and New York and gradually expanded that operation by serving the territories surrounding Wilkes-Barre and Scranton, Pa., Cumberland, Md., Greenville, S. C., Pittsburgh, Pa., and later by acquisitions of other trucking companies, heard before this Commission. I bought the Mauer Transfer Company of Rome, Ga., and Poole Transport Company, Inc., Greenville, S. C., and merged them with my own operation.

Q. You are presently the head of and have charge of all of the operations of Horton Lines?

A. Yes, sir.

Q. Have you any financial interest or any connection with any common carrier by motor, rail or water, other than Horton Motor Lines?

A. None whatsoever.

Q. Have you made any study of the transportation by motor of freight along the Atlantic Seaboard?

A. Yes; I have made many studies, the most important of which, I guess, is the study of the operation that has resulted in this application now being heard before the Commission.

Q. In attempting to put into effect the studies which you  
18 made, are the results that you have—

A. This application is an attempt to put into form and test the conclusions reached in those studies.

Q. Will you give a detailed history of the organization of the applicant company, and what led up to its organization?

A. Last year I had occasion to make a more detailed study of the operations along the Atlantic Seaboard, that is, of all the operations in the territory in which we operate, and in those in which we might contemplate operation at any time in the future, and it became evident to me, if properly put together, a very much finer transportation system by motor truck could be developed that was then in existence in that territory. At the same time, a much better service could be produced for the public, and economies could be effected, which would make the operations much more stable.

I have been much concerned in the last two or three years in watching the growth of my own company, and in knowing that I would eventually face a critical situation unless something could be done to strengthen my company and its possibilities of continuing to serve the public on into the future, at which time it might be expected that business would decline.

My own company has had an average growth of approximately 35 percent per year for a good many years. It has now reached a point where a 35 percent increase in its growth logically requires approximately that amount of additional equipment with which to do business, and since we now have in service in excess of \$2,000,000 of equipment, my task of providing 35 percent increase in that, or, roughly, \$700,000, becomes a burden.

Increased income taxes, excise taxes, and all of the taxes that may apply to the business have two effects. One is to reduce the profit from the common carrier operation, and the second is to leave in the hands of the owners of the business, after the payment of income taxes and profit taxes, less moneys out of which to take care of the requirements for the growth of the company. So I found our company in the position of being unable, without getting itself in a credit position that I consider very dangerous, to supply equipment to take care of the increasing business.

I said that our business had increased on an average of 35 percent over quite a long time. It is even increasing now. In the first half of this year, as compared with the first half of last year, the increase is 37.5 percent. We see no indication from our contacts with our shippers and from the development of additional business within the territory that we serve, that that percentage of increase is likely to be any less for some time in the future.

We are in a very peculiar position as a common carrier operation that we serve, since our Government has decided on a rearmament program and on preparing the country for

defense. It has been calling on the manufacturing ability of New England to a very large extent, particularly for materials and supplies and parts necessary to build and maintain an air force, and of the 200-odd airports that the Government has decided to develop and which it is in the process of developing, forty-odd of those are in New England and 45 or 46 are in the southern end of our territory, comprising, roughly, Virginia, the Carolinas, and Georgia. The flow of materials to supply the aircraft and necessary for the defense of our country comes primarily from New England and New York State. There is a very large aviation motor plant in Paterson, N. J., Wright Aeronautical. There was another one recently opened, within the last week or two, in Buffalo, a tremendous one. Pratt & Whitney are in Hartford, Conn.; Hamilton Propellers are in Connecticut; and many other parts manufacturers are in that territory; and we are finding an increase in the flow of materials into the camps, the forts, ship-building yards, and airports in the Southeastern territory.

**Q.** Certain of those are located in Florida, are they not?

**A.** They pretty well belt the Coast from the North down to around Mobile, evidently for the protection of the southeastern corner of the United States. So this tremendous increase in business which we have been experiencing for several years, as  
21 we have been digging our way out of the depression, is now augmented by the tremendous increase in defense, and the defense activity, particularly in the South, has produced another very important phase.

Many of the people in the South who, in past years, during the depression, had not had any too much income, are now being occupied in the building of cantonments, camps, forts, airports, et cetera, at much higher wages than they had been previously accustomed to receive, and a very large share of that money is going into the purchase of the things that people wish to have, in addition to the necessities of life. So that the increase in the flow of merchandise, of raw materials, from the Textile South up to the Manufacturing East, and the flow back of finished materials, cloth, shoes, and all of the things that people consume, are increasing sharply, in addition to the increased movement of freight for defense purposes.

So I found myself in the position of having to supply, either out of cash, which we do not have, or out of credit, which may be obtained either from banks or from finance companies, to take care of the purchase of a very large amount of equipment. My own business experience, having lived through three periods of sharply receding business, indicates to me that if I wish to produce  
22 the greatest element of security that I can for my business, for myself and for my family, I will have to maintain the

strongest possible financial position for the next several years. It has been my experience, and probably the history of business cycles would indicate that when business goes up sharply for a period of years, it is followed by a decline. That decline is one of the things that disturb me at this time.

I may be able to provide Horton Motor Lines with some additional equipment year after year out of its own profits, but I do not think I could provide it with the equipment necessary to take care of the increasing demands of our customers, and I would not be able to protect it against the dangerous position of being extended creditwise if and when the downswing in business may occur. I have talked with many of the heads of the companies applicant in this application, and others, and I find that their situation is approximately the same.

The percentage growth of Consolidated Motor Lines, a very large operation in New England, was about 34.5 percent for the first half of this year, as compared with the first half of last year. McCarthy's increase was 39.9 percent. That illustrates that the increase in business of my company is not peculiar to that company alone. It goes to all these other companies, too.

23 We have found also, and we have been told—I was told in a group not many weeks ago that met with Mr. Knudsen, Mr. Stettinius, and other members of the Defense Commission, in an appeal not to limit or not to cut the production of trucks, that we could not be expected to receive any time in the near future the amount of truck equipment that might be required to take care of all of the demands of all carriers, but that we were definitely and positively assured that we would be given parts, repair parts, and materials, to maintain in service the equipment we are now using. So these other companies, with which I have talked many times, have indicated that they are in the same dangerous position that we are. We wish to provide more transportation. It is needed, and will be more badly needed even before this year is out. I recall that in Mr. Eastman's report to Congress covering the year 1939, he called to their attention that in October of that year the rails had reached almost their total ability to provide transportation service for this country, and at that time their weekly average or carloadings was about 860,000 cars.

Mr. FAGO. What was that figure again?

The WITNESS. 860,000 cars.

Later, in conference with various governmental officials—I think under the auspices of the Federal Reserve System, but I am not positive about that—highway transport representatives, 24 coastwise steamer lines, representatives of railroads, our lines, and other transportation agencies were asked to give



their thoughts as to the ability of the transport systems of the country to serve the needs of the country, and in the statements made by the representatives of railroads at that time they stated they they were finding themselves in the position of not being able to get as speedy delivery on cars and locomotives as the increased traffic required. The rails presently are moving between 875,000 and 950,000 carloads weekly, and, in my opinion, that is very close to their 100 percent ability to provide transportation service.

Mr. FAGG. Mr. Examiner, I have no objection to this, but—

Mr. COCHRAN. I realize that it is—

Mr. FAGG. That is with reference to the rail companies carrying over 900,000 cars.

Exam. BAKER. Your motion will be granted.

The WITNESS. Then, I have to ask you, Mr. Examiner, whether or not I can make reference to the fact that coastwise steamers have been withdrawn from that service?

By Mr. COCHRAN:

Let me ask you a question there. Will you tell us the reasons which impel you to go to work and bring about the consolidation of these companies and what you did in that connection?

A. I am probably elaborating a little too much, but the point I am making is that one of the reasons, and a very strong reason, that made me go to these men and see if we could effect  
25 this merger—

Q. Yes; go ahead. Continue.

A. As a result of the conferences that I have had with these men, and having found them concerned with the same general things that have concerned me, I then took the entire matter as it at that time appeared to me to Mr. Seymour.

Q. Who is Mr. Seymour, and what is your relation to him?

A. Mr. Seymour is the man who last year was the president of the Transport Company, and I sold our company into the Transport Company, and in those negotiations and in many meetings following those negotiations, I came to know Mr. Seymour very well indeed.

Exam. BAKER. That is the Transport Company?

The WITNESS. The corporation which was the applicant in the proceeding before this Commission; yes, sir; which was denied last year.

Exam. BAKER. MC-F-1223?

The WITNESS. Yes, sir. So I have developed a great deal of confidence in Mr. Seymour and a considerable respect for his sound business judgment. I knew him to have given much of his own time to something like a similar study as to operations along the Atlantic Seaboard, and I took those to Mr. Seymour and was able

to interest him in the matter, and after making still more detailed studies as to the territory in which we might hope to operate, if such an application as this were approved, the kinds of service to be performed and the diversified numbers of commodities to be served, we then called in the heads of some of the companies that we thought might best fit into the picture that we were trying to put together. We had Mr. Seymour call these people in at meetings in his office many times. We had a series of meetings, lasting days and nights for weeks, at which time many of the differences of opinion were argued out, until, it seems, we finally came to a meeting of the minds. In the latter part of those meetings, collectively we developed the provisions which now constitute the contract of which we are signers.

By Mr. COCHRAN:

Q. The first step was the organization of Associated Transport, Inc., or at least that was the general sentiment during those conversations?

A. Yes, sir. During those conferences it was decided by the group that Transport Company, Inc., should be incorporated.

Q. Why was it incorporated and who were its officers and directors?

A. It was incorporated with Mr. Seymour, president; Mr. Hellman, as treasurer, and Miss Ryan as secretary, and myself was chairman of the board. Later the office of treasurer was made vacant, when Mr. Hellman went with Mr. Davis and Mr. Arnstein to China to attempt to keep the Burma Road open. He is over there now.

Q. Who was elected to his place as treasurer of the company?

27 A. I think Mr. Seymour was elected.

Q. And he is now president and treasurer; is that correct?

A. Yes; he is now president and treasurer. We sent out a list of a great number of names of all those suggested by all the group, and they checked the names that might be available for use in the States in which we operate, and among the three or four names that came back I find the name of an organization——

Q. Corporation Trust Company?

A. Corporation Trust Company.

Q. Why was Associated Transport, Inc., organized; what was the purpose back of the organization back of it?

A. Associated Transport was organized as the vehicle through which it would be most convenient for those companies to work out their affairs, and it was about the only way it could be done for developing among ourselves a recognition of our common problem and common danger, which could best be served by a 100 percent

exchange of stock, and to do that it was most practical and most workable to have an organization such as Associated Transport, through which it could be accomplished, and that is the purpose of the formation of Associated Transport, Inc., primarily.

Q. After the organization, did you continue your efforts to bring these people into the group?

A. Yes; that was done during our conferences. We had to have conferences every week for months.

28 Q. Do you recall the date when the contract was signed among all these companies?

A. June 11 of this year.

Q. Name the companies executing the contract.

A. Consolidated Motor Lines; McCarthy Freight System; M. Moran Transportation Company; Arrow Carrier Company; Barnwell Brothers, Inc.; Horton Motor Lines; Southeastern Motor Lines, and Transportation, Inc.; these eight carrier companies.

Q. Can you name the affiliated companies?

A. The four affiliated companies, noncarrier companies, are Brown Equipment & Manufacturing Company, Conger Realty Company—

Q. Barnwell Warehouse—

A. Barnwell Warehouse & Storage.

Q. Yes.

A. And one other in New England.

Q. Southern New England?

A. Southern New England Terminals.

Q. And you spoke to the heads of these companies during these conferences. To what particular persons, do you recall?

A. Well, of course, when I mentioned the heads of the companies, I meant, in the case of the Consolidated, Mr. Everett Arbour, chairman of the board of Consolidated; Mr. John McCarthy, president and chairman of the board of McCarthy

Freight System; Mr. Bob Barnwell, president of Barnwell  
29 Brothers, Inc.; Mr. Cliff Brock, president of Southeastern Motor Lines. That is the type of men I mean when I said I

spoke to the heads of the companies. You see, I have known these men for many years. We had been acquainted even before the code days, and at that particular time, I remember, I was a member of the National Code Authority, and had many meetings with these gentlemen, and after that we had many meetings in the formation of our Association, the National Trucking Association. I have known the heads of those companies for many years.

Q. Why did you select those men, you and Mr. Seymour, for the carrying on of the conferences with those particular companies?

A. For two reasons. One was on account of the territory covered. The natural flow of freight is up and down the Atlantic

Seaboard, and these companies, when properly integrated, would finally make the finest highway transportation system in the world, because it would mean the elimination of considerable delay, and the elimination of considerable expense in overhead and duplicate operations. We took all those things into consideration. We considered further the types of companies and, in the case of Moran, Moran has a considerable volume of business which we call in the business "peddler" runs. McCarthy has a considerable of what might be called "short line" runs, 30 or 60 miles. In the case of 30 Southeastern and Horton and Barnwell, they have long operations, running 500 to 600 or 800 miles. So we had the feeling that such a combination would make a strong transportation system.

We considered very closely the territories to be served, recognizing the kinship between the textile plants in the South and the textile plants up in New England. We recognized that there was a natural flow of freight that might be expected for many years between the textile Carolinas and Virginia and the New England States. We recognized that there was a tremendous manufacture in New York State, Syracuse, Binghamton, and many of those cities—materials, supplies, machinery—that move into the South, and from the South into New England. These companies were also selected because they have a long record of credit and earnings behind them. They are strong, stable companies, and we wish to put this thing together in an operation which would be successful from a high earning standpoint, so that it could be kept and maintained in a sound position, and these companies provide that situation.

Consolidated is a very fine operation in New England, and when used in conjunction with McCarthy probably will take care of every reasonable shipper needs in that territory, and when combined with the service available by Southeastern, Horton, and 31 Barnwell, moving farther south on the Atlantic Seaboard than New York, would provide a transportation system beyond those areas which it would be hard to surpass.

Q. In carrying out this idea, did you consider the position of each of those companies very important?

A. Yes, sir; very important. One of the very important reasons for putting this thing on a wholly 100 percent exchange of stock theory was to keep in the company the people who developed those companies, and nobody can tell—I certainly would not like any kind of a deal in which my company became a part, if Everett Arbor and Bob Barnwell, and John McCarthy, and all those men moved out. I would not have the ability to run such a transportation system. They can be expected to continue to maintain

their full financial interest in this kind of a deal, and they will furnish just as much effort in making this kind of an operation a success because their livelihood and their future will go into that job, and they have told me that they propose to do this, and I have told them that I propose to stay in and work. There is nobody selling out; there is no selling out.

Q. I believe you stated that these contracts between these various companies and Associated Transport, Inc., were signed on June 11, 1941.

A. Yes.

Q. On the date of the signing of those contracts, what additions were made to the directorate of Associated Transport, Inc.?

A. The contracts were all signed simultaneously, and at that same time Mr. R. W. Barnwell, president of Barnwell Brothers, was elected to the board of directors; Mr. John G. McCarthy, president of the McCarthy system, was elected on the board of directors; Mr. Everett J. Arbour, chairman of that board, was elected on the board of directors; Mr. Clifford Brock, president of Southeastern, was elected on the board of directors; Mr. Wiley Moore, a majority owner of Transportation, Inc., was elected on the board of directors; I was already on the board; Mr. Seymour was on the board.

Q. In other words, a key man from each of those companies was elected to the board of directors of Associated Transport, Inc.

A. Right.

Exam. BAKER. While you are speaking of the directors, you might identify J. S. Arnold. I believe he is also a member.

The Witness. J. S. Arnold is representing the Transportation Company, who are the present owners of Arrow Carrier Corporation.

By Mr. COCHRAN:

Q. I believe every carrier came into this group through Transport; is that correct?

A. That is correct; they came in through Transport and Transport owned Arrow.

Q. They had purchased an option.

A. Yes; they had purchased an option.

33 Q. To the total stock, the preferred stock, as set forth in the exhibit attached to the application.

A. Yes, sir.

Q. I want to go back and ask you one question with reference to Associated Transport, Inc. Under the laws of what State was that incorporated?

A. Delaware.



**Q.** Speaking of the key men of each of these companies, what is contemplated with respect to the position they will occupy in Associated Transport, Inc., if and when it becomes an operating unit?

**A.** Those key men are expected and have indicated that they will continue to operate the companies that they are not now operating. In addition, as members of the board of directors of Associated Transport, they will develop the policies of Associated Transport, but they will have to operate their business as they have in the past.

**Q.** In the event of—

**A.** None of those men go out; they are all being used in the company.

**Q.** In the event of the consolidation of these lines, or any of them, would that eliminate any of these directors?

**A.** None whatsoever. They would continue to serve as directors in charge of divisions of Associated Transport.

**Q.** It is contemplated, is it not, Mr. Horton, that as soon  
34 as sound business conditions would justify it, and upon approval of the Commission to consolidate—

**A.** It is.

**Q.** Please wait until I have finished—that all or at least part of these companies are going to be under unified control.

**A.** It is, and Associated Transport is now ready and willing to bring about such integration or unification just as fast as the legal requirements permit, and by "legal requirements" I mean the requirements of the various States as to registration, insurance requirements, and the time in either getting out from under or buying out or eliminating leases and providing facilities to take care of combined operations. Associated Transport stands ready to do all of those things just as fast as can be done.

**Mr. Fagg.** Mr. Examiner, does the witness answer that question as it relates to in whole or in part as to this consolidation? That was the question.

**Mr. COCHRAN.** The question was whether this consolidation is ready as far as practical and within the legal time limits to proceed with the consolidation, either in whole or in part of all these companies, and your answer—

**The WITNESS.** Yes

**Mr. COCHRAN.** —to that question is "yes"?

**The WITNESS.** Yes.

35 **Exam. BAKER.** I believe what Mr. Fagg had in mind was whether it is contemplated that it will be in whole or it will be in part.

**Mr. COCHRAN.** All right.

By Mr. COCHRAN:

Q. I will ask you this further question, Mr. Horton: Is it contemplated that all of the assets of all of these companies will, in the near future, if the application is approved, be transferred to Associated Transport, Inc., thereby bringing about a complete consolidation and unification?

A. It is.

Q. Mr. Horton, are you familiar with this map on the board over here?

A. Yes, sir.

Q. Was it made under your supervision?

A. Yes, sir.

Q. What does it disclose?

A. That discloses, in general, the routes and territories served by these companies in this application—the eight carriers.

Q. Will you describe generally the territorial scope of these operations?

A. It covers Massachusetts, Connecticut, and Rhode Island quite thoroughly in New England; New York State, Pennsylvania, New Jersey, Delaware, District of Columbia, Virginia, a corner of West Virginia, North and South Carolina, Georgia, an extension of one operation into Tennessee, and another into Alabama, northern Florida, Mississippi, and Louisiana. The main operation, however, is in New England, New York State, and the States bordering the Atlantic Seaboard north of Florida. It is all common carrier service, and it is a good combination of short haul, intermediate length haul, and long haul operations.

Mr. WOODS. Mr. Examiner, may I hand you this letter from the Secretary of the Commission permitting me to participate in this proceeding as special representative of Super Service?

Exam. BAKER. Thank you, Mr. Woods. You will be permitted to participate in the proceeding.

Mr. WOODS. Thank you.

The WITNESS. Mr. Examiner, I have some notes before me of points that I wish not to forget.

Mr. COCHRAN. Just a minute.

By Mr. COCHRAN:

Q. Will you state the names of the present officers of Associated Transport, Inc.?

A. The present officers are Mr. B. M. C. Moore, president; Mr. Everett Arbour, vice-president; Mr. John McCarthy, secretary, and Miss Dorothy D. Ryan, assistant secretary. That is all. Are there any more?

Q. And Mr. Seymour?

A. And Mr. Seymour is also treasurer.

37. Q. What is your position?

A. Chairman of the board, sir.

Q. Are there any salaries paid to any of these officials?

A. Only to Mr. Seymour.

Q. What is his salary?

A. His salary is \$36,000 a year.

Q. Mr. Horton, are you familiar—

A. In that connection, I want to say something that I forgot to say a while ago, and it is one of the most important points, why I went to Seymour and tried most strenuously to sell him on this type of deal, was the fact that if it were put together I knew it would be a tremendous task, and Mr. Seymour's wide business experience would be of great value in helping to do this job. We all recognized his ability; I think every one of the heads of these companies does, and are very glad to have Mr. Seymour. Without him I would be reluctant to attempt the job, because I have had no such experience myself.

Q. You are familiar with the application, Docket No. MC-F-1612 and Docket No. MC-F-1613?

A. Yes, sir.

Q. And you are familiar with the terms and conditions of the contract set forth in this application?

A. Yes, sir.

38. Q. Just let me finish the question, please. And the contract between Horton Motor Lines and Conger Realty Company.

A. Yes, sir.

Q. Are those contracts, the main contracts, similar to all other contracts that were executed by the other companies?

A. Yes, sir; with minor exceptions, which are shown in the exhibit.

Q. I was coming to that. I am talking about the main contract.

A. Yes.

Q. Are the differences with respect to the exhibits attached to this application all explained in this contract?

A. Yes, sir.

Q. Are there any outstanding employment contracts on behalf of all of the companies whose names appear in this application?

A. Yes; three.

Q. Name the three.

A. Mr. Ackerman, Mr. Whitehead, and Mr. Buckley, of Arrow Carrier Corporation. Those are the three men who were with the Arrow Carrier Corporation, but in the sale that was made last year to the Transport Company, the sale was complete, and they would have no financial interest in and receive no stock by ex-

change of stock in the Associated Transport Company; so we were much concerned in having those men to continue to serve in the capacities that they have served so well in the past, and after they had accepted a reduction in salary, we gave those men management contracts.

Q. The exhibit states the amount of the salary?

A. The exhibit states the amount of the salary.

Q. And it is your opinion that these men, if continued as employees of the Associated Transport or Arrow Carrier Corporation, upon approval of this application, in whatever form the operations may be in the future, would render valuable services and be more or less necessary for the operation of the company?

A. They will render valuable services, and it is quite important to this operation that they be continued in their present positions.

Q. Is there any tentative agreement with them in connection with McCarthy?

A. There is no management contract in effect now, but I will insist that a contract be given Mr. Bertuchio. Mr. Bertuchio occupies a rather unique position in New England in his very close contact with a large number of shippers and customers, important in this transaction, and I think it would be a serious mistake if Mr. Bertuchio were not given a contract which would keep him tied to this company for a term of years to do the same job that he has done up there for McCarthy.

Q. Mr. Horton, I believe you have——

Exam. BAKER. Just a moment. May I clarify that. Is that Mr. George Bertuchio?

The WITNESS. Yes, sir.

By Mr. COCHRAN:

Q. I believe, Mr. Horton, that you yourself have a contract with someone in Richmond on an annual retainer basis.

A. We have a public relations counsel in Richmond, and have had for a number of years, subject to cancellation on one year's notice. We do not propose to cancel that contract.

Q. How much is it worth?

A. It is just the employment of legal counsel.

Q. Are there any other contracts, express or implied, which could be called "management" contracts, or any other sort of contract?

A. Nothing that could be called "management."

Q. I will rephrase the question: Are there any other contracts, either express or implied, existing between Associated Transport and any other corporation or any person, to your knowledge?

A. No, sir.

Q. Are there any writings, agreements, or references to sales of stock, if or when any stocks should be offered the public?

A. None.

Q. You may at this point. Mr. Horton, if you will, explain why Mr. Seymour is a large subscriber to and a holder of stock of the Associated Transport Company.

41 A. In those many meetings that we had in Mr. Seymour's office in New York, covering practically all periods since the first of the year, we have found that there was considerable expense involved, most of which Mr. Seymour was bearing out of his pocket at the time. He was too good a host for his own good. So we decided that the proper thing to do was to create a fund out of which such expenses might be paid and expenses incident to this hearing, and after conferences we agreed that we would buy limited numbers of \$1 par common stock and pay the money into the treasury, and if nothing ever came out of this deal we would have prorata been stuck with expenses, in an attempt to provide that particular source of money and at the same time to tie Mr. Seymour into this deal; so that if and when it should be approved, he would continue to serve as president of the company, and through having an interest in the affairs, serve more people than one might in having no financial interest in it, we rather insisted that Mr. Seymour buy some of the same \$1 stock. Mr. Seymour did that. If the deal is put together, all right. If it is not, he loses, along with us.

Q. There is an understanding, or, rather, a signed agreement by the representatives of the stockholders with reference to the withdrawal of a certain amount of money during the year 1941. Will you explain that?

42 A. It has been the policy of these companies, some very important companies, that near the end of the year to make certain donations or payments of bonuses, and sections of this contract provided for the withdrawal of any moneys other than for ordinary business purposes, or the payment of any dividends, to become necessary and advisable, to make some provision, so that nearing the end of this year, if a decision, either favorable or unfavorable, had not been rendered by the Commission, these companies could continue the policies that had been found standing in their businesses for many years, and by this withdrawal agreement it is possible to do that thing. It produces that result.

Q. Mr. Horton, is this a photostatic copy of the agreement to which you refer?

A. Yes, sir.

Exam. BAKER: Mr. Cochran, do you have copies of that available for counsel?

Mr. COCHRAN: I have.



Exam. BAKER: Do you desire this to be marked for identification?

Mr. COCHRAN: Yes; I would like this marked as "Applicant's Exhibit No. 1."

Exam. BAKER: The document entitled "Memorandum of Agreement between Associated Transport, Inc., and the other parties undersigned, hereinafter called the 'Designees,'" will be marked for identification as "Application's Exhibit No. 1."

43 (Exhibit No. 1, witness HORTON, marked for identification.)

Mr. COCHRAN. There are copies here of that document for any who want them.

By Mr. COCHRAN:

Q. Mr. Horton, the application, MC-F-1613, filed as part of the record in this case, asks for permission or approval to sell 15,000 shares of preferred stock to the public for the purpose of producing working capital. Will you please explain the reasons why that is essential, if it is essential.

Mr. SULLIVAN. Excuse me.

Mr. COCHRAN. Yes.

Mr. Examiner, I want to go back to this exhibit for one moment.

By Mr. COCHRAN:

Q. Mr. Horton, you will notice that Associated Transport, Inc., does not appear as the party to this withdrawal agreement, which is now Exhibit No. 1, for identification. Do you know of your own knowledge that Associated Transport, Inc., executed simultaneously with the execution of the main contract by the company an agreement similar to this?

A. Yes, they did.

Exam. BAKER. It is identical, Mr. Horton?

By Mr. COCHRAN:

Q. Mr. Horton, is it identical?

A. It is identical.

44 Q. Now, will you please state what your reasons are, or the applicant's reason, if you know, for the sale of 15,000 shares of preferred stock of the company.

A. As I stated a while ago, these companies find a great need for an increased amount of equipment with which to carry on the transportation service now being required by their customers and it is extremely dangerous to buy that equipment on extended payment terms or to buy it with money borrowed from banks, because, in each case, you have an obligation with a fixed due date, which must be met.

The amount of equipment owned by these companies is substantial—several million dollars, and if even a part of the equipment necessary to take care of the increased volume of business that we are now experiencing were to be bought for cash, it would require a large share of this one and a half million dollars for that purpose. The remaining amount not used for the purpose could well be put in working capital, because all of these companies, just as my company, are now finding increased costs of operation, or are requiring larger working funds; so that we actually find ourselves in the position of being cramped for ready cash.

It is much to the interest of this operation to have more funds available for working capital and to be able to buy equipment for cash, or very largely for cash, with a small amount of extended payment terms. It is my belief that bank credit, as  
45 such, should be held for contingencies in business, and should not be used for the purchase of equipment, because our business is such that moneys invested in motive equipment on the highway cannot be liquidated quickly. It takes several years in which to liquidate that value. For that reason it is unsound to borrow money from a bank on any reasonably short-term paper to buy equipment with it, because it cannot be liquidated.

It is also unsound and dangerous to buy any considerable amount of equipment on extended payment terms carried through finance companies, because, in my experience, payment terms can be a tremendous burden when business starts down and revenue decreases sharply. These two situations usually produce a lack of profits that makes any fixed payment obligation extremely embarrassing.

I think that a million and a half dollars in these combined companies would put them in a much stronger financial position and in a position to perform a much better service for the public without being a burden on the operation. The dividend requirement on that preferred stock probably would be \$90,000 a year, and that would certainly not be a burden on the combined profits of these 12 companies.

Exam. BAKER. I suggest, before we proceed any further, that we take a 10-minute recess.

46 (There was a short recess taken.)

Exam. BAKER. Come to order, gentlemen. You may proceed, Mr. Cochran.

By Mr. COCHRAN:

Q. Mr. Horton, had you completed your answer to the question that was asked you just before the recess?

A. No, sir; not fully.

Q. Go ahead.

A. I want to say this—what I did say might be misunderstood, and I want to make it clear—that when I cited the possibility of \$90,000 dividend on an issue of \$1,500,000 of preferred stock would not be a burden on these 12 companies or their earnings, I intended to say further in that connection that it will not be a burden because the economies that can be produced from the use of that \$1,500,000 mortgage would not be greater than any dividend requirements which these companies would have to meet in the dangerous condition of having a fixed-date obligation. I found that, in my past experience, an extremely important point in dividend requirements, to have dividends in times of great stress be deferred and paid later in times of better business and better earnings. That situation is not true with fixed-term obligations, and it is entirely likely that these companies—as a matter of fact I happen to know that it is true that some of these companies are paying a fairly high interest rate on some of the moneys they are  
47 using in their business at the present time for the purchase of equipment, moneys borrowed at the bank. A great savings can be effected by eliminating those points. I want to say one thing further, and that has to do with the territory, the overlapping and the integrating of these companies.

The Arrow Company is the only company in the country that has the type of coverage and the kind of service that we wish to have. It has built up a connecting link between New York State and the South. There is no other company that I know of that has the history of earnings and good will of the shipping public in that territory, and because that company is so important in this deal I felt, and my opinion was concurred in completely, that Mr. Ackerman and Mr. Whitehead and Mr. Buckley were tremendously important.

I also failed to mention the fact that their employment contracts were with the Transport Company, and the Transport Company had effected reductions in their salaries; in the case of Mr. Ackerman, from \$36,000 to \$25,000 a year; in the case of Mr. Whitehead, from \$18,000 to \$12,000; in the case of Mr. Buckley, from \$12,000 to \$9,000 a year.

We were greatly interested in having those contracts become a part of the deal and to have them come with us because, otherwise, those men, having no financial interest in the Associated  
48 Transport, would be free to continue a competitive operation in that territory. We need them, and we might suffer a loss of business, after that company came in with us, unless we had some method of tying those three gentlemen in with this company. We are very much interested in having those management contracts in the case of every other company, because the Commis-

sion, in the Transport case, indicated that they did not like management contracts, and so we had every management contract in effect by every company canceled out, and there are no other management contracts. We have attempted to put this deal together on a basis that would meet every objection that the Commission indicated in reporting on the Transport application.

We have no promotion stock; we have no group of New York attorneys heading the thing up; and I would like to have it written as a part of the record—I think it would be interesting—as a matter of fact, Mr. Cochran, who is asking me the questions this morning, is not only my close personal friend, but is a member of the board of directors of my company, and in the event of my death would be trustee of my estate and chairman of the board of directors of the Horton Motor Company. The connection of Mr. Mortimer Sullivan with the Moran Transportation Lines, I am quite sure, is equally as close as is the connection of Mr. Joseloff with Mr. Arbour and the Consolidated Motor Lines. We are using

our attorneys, people we have known and worked with for  
49 many years, and in attempting this deal we are leaving out everything that we thought the Commission might want us to leave out.

We must have such territorial coverage as will make a well integrated trucking operation, from a practical viewpoint but—

Q. And it is your opinion, is it not, that if this is granted and you are put on the basis asked for in this application, it will result in an integrated unit for the carrying of freight along the Atlantic Seaboard?

A. Very definitely, and it will result in a tremendously improved service. There is not the slightest doubt about that.

Q. How about the diversification of freight, the commodities to be carried by this system?

A. Well, it produces two things. First, the diversification of service provides a perfect testing ground of the value to the customer of such a company of this kind of service.

As I have previously mentioned, we have very short-haul operations; we have "peddler" runs; we have medium-length operations, such as Consolidated from Boston to New York, or Boston to Philadelphia. We have long-haul operations, such as Horton, from New York to Atlanta. We have end-to-end companies, such as Consolidated, McCarthy, Horton, and Barnwell. We have overlapping companies, but to no great extent. If you will watch the

50 map you will see in New England there are only two companies that would become one. In New York State, a part of Consolidated operation extends out into New York State and duplicates to some extent Moran's. So there is an elimination of one angle to that. There is practically no elimination in the Penn-

sylvania territory served by Arrow, but down in the Carolinas there is a considerable elimination of duplication, that being on the part of Barnwell and ourselves, and down at the very low end, a small end, by Transportation, Inc. There is a considerable area served, such as our operation from Cumberland to Pittsburgh, and Moran's operation down to Cleveland from Buffalo, and Transportation's operation southeast from Atlanta down and ending at New Orleans. There is no elimination of duplicate service at all. Those services will be continued.

Q. When you speak of "our" operations, you mean the Horton Motor Lines' operation?

A. Yes, sir.

Q. On the question of interchange of freight, will there be any change, so far as the consolidation of these companies goes—with reference to the interchange of freight with other companies?

Mr. Fagg. Would you let me have that question?

(Question read.)

A. There will be no lessening of that interchange, except where it is not necessary through the integration of this  
51 service. We now interchange freight with 225 motor carriers. After this deal is put together, we will interchange freight with 221 motor carriers, and four that we are presently interchanging with will be made part of this system.

By Mr. COCHRAN:

Q. When you say that—

A. That brings about an opportunity, I think, to say something important on this deal. It has been the policy of some of these companies to do the very minimum of exchange of freight. I think that that is wholly true with the Arrow Carrier organization. I was told by the head of their business that they only exchanged freight with two people, and yet surrounding their territory is territory to which, through exchange of freight or exchange of equipment without delay, a tremendously advantageous service could be produced.

Our own experience, and the detailed records support it, will indicate an advantage to such carriers as Consolidated and Moran to a much greater degree than they could ever hope to develop by such operation—the advantage of having many connections and diversity of territory, and the great advantage in having the greatest number of points served, to offer to each customer. It is going to be tremendously important, in serving particularly some of the larger shippers, to offer to them the widest possible territorial coverage, because most of them are finding themselves  
52 greatly handicapped in lacking facilities to receive and ship freight at their own plants. We are finding ourselves in many places having to make deliveries to certain customers within



a certain given number of minutes, because they have a list of people that can serve them, and have so many minutes to come in and get out. We will have a wider territory that our trucks can offer to those people through a consolidated service, and a very much finer service, and all of those shippers that I have talked to concerning this deal—and I have talked to hundreds of them—consider this an important point, a very important point.

Mr. COCHRAN:

Q. Mr. Horton, I want to ask you a question with reference to the dollar stock purchased by Mr. Seymour. Is there any agreement, express or implied, as a result of which Mr. Seymour will or may buy or secure additional stock in the Associated Transport, Inc.?

A. None at all.

Q. Mr. Horton, is it contemplated that any such agreement will be made?

A. No.

Q. Mr. Horton, on the question of competition in the transportation of freight along the Atlantic Seaboard, what, in your opinion, will result, if this consolidation is approved, with reference to other carriers operating in the same territory? I have  
53 reference to the extent of competition. Will there remain competition of a sufficient character to enable the shippers in those sections of the territory—

A. Well, there will remain very substantial competition.

Q. To secure other carriers sufficient to handle the freight?

A. There will remain—

Q. You broke into my question before I had it finished, but you understand what I am asking you.

A. Yes.

Q. Pardon me. Go ahead.

A. Pardon me, if I jumped the gun. I recall that there was no question raised in the study of the decision of the Commission in the Transport case. There were 28 operating companies in the proposed deal, and there was no question raised about any territory, excepting an implied doubt as to whether in the South there would remain sufficient competition outside of the deal. In the South at that time there were Brooks, Barnwell, Horton, Rutherford, Southeastern, Super Service, Mundy, and many companies not in this case. In that territory now there are just two, Horton and Barnwell, that were then before the Commission, and in the meanwhile, the Brooks Transportation, a big operation centering in Richmond, have extended their service into the Carolinas; and Mason & Dixon, a very large operation, which previously did not serve the Carolinas, are now in that territory.

As I mentioned, Mundy, Super Service, and some of the  
54 other carriers in that territory that were in the Transport  
deal, are not in this one. I am not saying that the elimination of Barnwell, or my rights, where we have overlapped, would seriously affect the remaining competition. There are scores of those companies, most of which have grown very large. The Harris Motor Lines, at Charlotte, are running two or three times as much equipment as they did a year ago, and the same is true of Akers and many of the others.

Exam. BAKER. Is that the Akers Motor Lines?

The WITNESS. Yes; the Akers Motor Lines.

Now, if you will look at the map, you will notice, as I have previously mentioned, although I did not make a very strong point of that, and that is, that in the case of New England and in that territory there is a tremendous number of carriers, but in Massachusetts, Rhode Island, and Connecticut there are just two carriers in this deal. In the New York territory there are just two, Moran and Consolidated, and down along the Atlantic Seaboard there are Barnwell, Horton, and to some small extent, over on the other side of the mountains, Southeastern. Down in South Carolina and Georgia there will be a slight elimination of duplicate operations in the case of Transportation, Inc. These companies do not overlap sharply. They have been deliberately picked out to produce that result, and to produce end-to-end operations, resulting in a great advantage in the service to the public. They  
55 are additional points that we can offer.

By Mr. COCHRAN:

Q. Mr. Horton, what advantage is there in the transportation of freight by motor that would be brought about by the consolidation of these companies, if any, and will the consolidation of these companies, if it is brought about, be in the public interest, in your opinion?

A. Well, I have made some notes on that point, on those two points, I guess you might call them.

Q. That is right.

A. And there are so many advantages in that operation to the shipping public that I would like to refer to these notes, so I will not overlook some of my important things. One tremendous advantage is going to be the possibility of the increased utilization of equipment, and by that I mean such equipment as line trucks, pick-up trucks, garage and testing equipment, cost accounting equipment, and office equipment.

We know that in some of these operations there are feeder runs. Many of these feeder runs, which, I suppose, are very similar in many respects to such runs on railroads, branch line opera-

tions—are a necessary part of the operation, but in many cases a burden on the operation. These feeder runs, through the fact that a very much wider territory will be covered and offered to the customer, can be made to be self-supporting, and in some  
56 cases put on a profitable basis. The equipment used in those services in such cases would carry more freight per unit, and in that manner would produce a self-sustaining feature.

In each one of these companies, it is necessary to hold out of service certain reserves of equipment, which may be transferred to points of greatest need, and which may be put in service sustaining schedules to replace the equipment going out for repair or out of service by wrecks, or completely worn out. Combining the ownership of all of this equipment, there would be a more flexible use of a large share of this equipment now held out as reserves and not in daily use. That could then be put into use for that transportation service, and while it was providing transportation service it would take care of the increased demand of the shippers and would be earning revenue for the companies. The warehouse situation with these companies has been an important matter. I know that is true in my own case, and after conference with some of these other representatives I know it is largely true in their cases. We have warehouses in small towns or cities simply for the convenience of the customer. Many of these warehouses are a burden.

As an illustration, in Shelby, N. C., Barnwell and ourselves both maintain warehouses. That is a keenly competitive point with us, and either one of those warehouses could do all the business that moves into and out of there by using  
57 combined operations. If we were permitted this consolidation we would require only one warehouse for a job that two are now doing, and we would keep the crew, the minimum crew, that is necessary, as well as the office staff, loaders, checkers and drivers, which presently are a burden on both of us. Since neither warehouse sustains itself in our operations, we would let one warehouse do the complete job and move the other one to Durham, and in doing so we would give very much better service to the shippers in Durham. The same thing would be true exactly in Hickory, N. C. One or the other of us would use the facilities best suited for the use of that territory, moving the other personnel, equipment, warehouse and all, to Ashboro, and again, in that connection, we would produce for ourselves economy of operation and very much better service to the shipping public.

A further illustration of the situation of Barnwell and Horton is in Charlotte. We find ourselves very badly congested in our warehouse there, a warehouse that we built for ourselves, due to the fact that it is in the middle of our operation. We have both

north-bound and south-bound freight moving through the same warehouse and across the same platform at the same time. In times of heavy flow of traffic, this is a tremendous burden, and it creates a great deal of confusion, many hours of delay, and added  
58      lost and damage through the multiple number of times that the shipments must be handled. We undoubtedly could use a Horton warehouse for either a north- or south-bound warehouse, and the Barnwell warehouse, which is just across the corner from us, for freight moving in the opposite direction. We could use the Horton for the north-bound warehouse and Barnwell for the south-bound, and in this manner we could eliminate any confusion caused by freight working opposite across the platforms.

That would not effect costs particularly, so far as anybody employed in that type of operation is concerned. It just expedites the movement of freight; it causes less delay and less loss and damage—points which I am sure are quite interesting to the public. In the use of pick-up trucks—and this point concerning the use of line trucks is going to be increasingly important, as it is getting more difficult to get sufficient equipment to do our job—operating out of the Burlington warehouse, and going back again to my operation, because I am more familiar with it although it is largely true of these other companies, Barnwell and ourselves both have a run to Fayetteville, N. C., a distance of some 100 miles. I do not suppose that my truck down to Fayetteville has ever been fully loaded coming back, and I do not imagine Barnwell's has, except in a few cases. One of us could keep our piece of equipment and let the other truck go into that territory where it is needed.

We are finding points today where we are just not able  
59      to give service through lack of equipment that the customer requires. By this better utilization of equipment, I think we can probably do that. It is going to be necessary that we continue in service trucks for a longer number of months or years than we have in the past. It has been the policy of these companies, all of them, that, at some point in the life of the truck to retire it from service, sell it for junk, or trade it out, dispose of it, and replace it with new equipment. The ability to do that is going to be curtailed greatly, we are told by the Defense Commission; so it is necessary that we maintain for longer periods of time the equipment that we presently have.

Today we have to have an adequate supply of parts and materials, adequate skilled help, such as mechanics and electricians, and adequate repair equipment, such as motor rebuilding equipment and motor testing equipment. All of these companies do not now have such equipment; Some of them do, but, through

the use of centralized service and repair garages, which is only possible through this kind of a deal, such equipment—and it is almost impossible to get it today—could be made available for the trucks of all these companies. If that were done, I am quite sure that those companies not presently able to have such service would find the same experience that I have found, that by the use of finer machines and equipment in repairing motors and in testing them on the blocks and running them before they are put back into service, they will not only be freer from delay, but will be able to keep them running on the smaller consumption of gasoline and oil.

In the matter of inventory of parts, it is daily becoming increasingly difficult to maintain an inventory of parts adequate to do the proper servicing job on our equipment. Each of these carriers has equipment out of service awaiting the arrival of some piece of material or part from some manufacturer. The combined inventories of all of these companies, stationed at two or three centrally located points, would lessen such delay and such waiting periods for parts, because they would have a very much larger and more adequate inventory of parts.

In the use of cost accounting equipment—and, again, that is equipment that it is practically impossible to get; I mean, such equipment as International Business machines—it is possible through the use of that equipment, since the adoption of centralized cost accounting, to gather statistics together relative to cost of operations and analyses of movements of freight by areas and by customers. That is not now practical and impossible with these companies operating independently. There are only three of the eight companies that have complete set-ups of such cost accounting equipment, not only for cost accounting but for traffic analyses and comparative studies of operating costs; but by this combination, this equipment and the trained personnel necessary to keep the equipment in service, can be made available for all the companies.

We have found that through the use of such equipment we have been able to make a detailed study of commodities that move within certain areas, which are of tremendous value to the sales department in helping to develop freight from areas and to areas, from and to which partly loaded trucks are running.

I want to make a point which is a little independent of the point that I am stating now, but I think it is very important, and if I am repeating myself, that is all right.

There is not going to be enough transportation in this country from the middle of October on through many months to come,



and it is going to be absolutely necessary for everybody who is able to perform transportation service to provide the absolute maximum of service within his power to provide. I am not speaking now only of defense, but I am speaking of the movement of merchandise, materials, and commodities, in our normal industrial and commercial life.

We have found ourselves in this position: In the year 1940 our average pick-up or delivery of freight was 457 pounds, or 450-odd pounds. It is now over 100 pounds more than that, and it is absolutely impossible for me or any of my organization to go to those shippers who have been using our service for 62 years; and relying on it, to supply them with the type of transportation services that they expect from us, and say, "We can still take the 450 pounds of freight each day that you gave us last year, but the extra 100 pounds or more you will have to put it in a wheelbarrow, because we have not the trucks to run it."

We have to run the trucks by the transportation service that the shippers require. We have to get every piece of equipment that is out of service for any reason back on the highway, operating as safely as we can provide. We have to use every skilled employee that we have, and we have lost severely in skilled mechanics. One of our major operators lost every mechanic that he had in one of his important garages, either to the military service or to some other defense plant. So that all of the equipment we have for the maintenance of our transportation service, and all of the skilled employees that we have, we must utilize to the fullest possible extent.

As to the increased use of warehouses, these eight companies now have 179 warehouses, of which 97 are in cities and towns not served by any other one of the companies. Thirty-eight of these 179 warehouses are in cities and towns in which there are two warehouses of these companies, 11 cities have three warehouses each; one city has five, and one six, and through the rearrangement of the use of the these warehouses there is not the slightest 63 doubt that substantial economies can be effected on the one hand, and there will be a greatly improved service, on the other.

Mr. TOBIN. Would you mind running down the list of the cities in which these warehouses are located?

The WITNESS. Yes; I have them.

Exam. BAKER. It may be helpful if you would state the cities where the duplications are.

The WITNESS. The city having six terminals of these companies is New York City; the city having five is Philadelphia; the cities

having three are Albany, N. Y., Baltimore, Md., Binghamton, N. Y., Burlington, N. C., Charlotte, N. C., Greensboro, N. C., Hickory, N. C., Newark, N. J., Paterson, N. J., Shelby, N. C., and Winston-Salem, N. C.

Do you want the list of those having just two?

Exam. BAKER. How many are there?

The WITNESS. There are 39.

Exam. BAKER. Yes; will you read those, Mr. Horton.

The WITNESS. All right, sir.

Atlanta, Ga., Boston, Mass., Bridgeport, Conn., Bristol, Va., Tenn., Buffalo, N. Y., Cumberland, Md., Hartford, Conn., Knoxville, Tenn., New Haven, Conn., Pittsfield, Mass., Providence, R. I., Rochester, N. Y., Schenectady, N. Y., Spartanburg, S. C., Springfield, Mass., Syracuse, N. Y., Utica, N. Y., Waterbury, Conn., and Worcester, Mass.

All the others have only one.

64 Mr. COCHRAN. I believe you read only twenty, Mr. Horton.

The WITNESS. I might make an error in this, because it is blurred; it has been worked over so much. How many did I say there were?

Mr. SULLIVAN: You said 39.

The WITNESS. I said 38 of these warehouses, of these 179 warehouses, are in 19 cities and towns.

Mr. Fagg. Mr. Horton, when you use the word "warehouse," do you use that word in the same sense as "terminal"?

The WITNESS. In most cases, the word means the same thing. In some points it means a pick-up station. It may be a service garage or a gasoline filling station. In most cases it means a motor freight terminal, and I suppose that probably the word "terminal" is more easily understood than the word "warehouse." I use "warehouse" because that is most familiar in my own operation, as we really do have warehouses.

Now, the increased utilization of equipment of all sorts, pick-up trucks, line trucks, warehouse facilities, office facilities, garage and testing equipment, produces out of the same number of pieces of equipment more transportation service and produce some economies of operation.

Mr. Cochran, I understand that you asked me a question as to the public interest?

By Mr. COCHRAN:

Q. Yes. Have you finished with the advantages that you have been enumerating?

65 A. I have finished largely the increased utilization of equipment.

Q. Have you referred to the standardization of equipment as being one of the economies that might be brought about?

A. I forgot to mention it. That is quite an important point.

The ultimate standardization of equipment by these companies would mean that they would be able to put equipment of like makes and models in the same areas. For instance, we have today Autocars, Whites and Macks in our operation, and some of that type of equipment is in use by the other carriers. We could put all the White equipment in one area and all of the Mack equipment in another area, and get very much finer service by putting in a central garage all of the inventory of parts or materials necessary to maintain that kind of equipment. Personally, I have to have not only skilled mechanics, but parts and materials to maintain four different kinds of trucks. If I had to have parts and equipment and skilled men to maintain only one kind of truck, it would require less investment in parts and materials and less delay in getting the important parts and materials that are difficult to get, and the skilled personnel that I have could be used to a greater advantage in maintaining such equipment.

So the standardization of equipment which a unified system such as this could produce would be tremendously important, in addition to the standardization of cost accounting equipment

66 which is now being developed by one or two of the companies through the use of their cost accounting set-ups could be established over a reasonable period of time, and it could be determined exactly which equipment is the best and safest and the most economical to operate in any given service. Presently, under the competition existing between these carriers, such information is not exchanged, but undoubtedly cooperative effort of all of the heads of these companies and their organizations will produce additional points at which economies can be expected. In the type of service that might be rendered tremendous advantages can be had.

For instance, we bring equipment into New York in the early morning, loaded with freight for New England destinations. In the operation of our business with the Consolidated Motor Line, with which we exchange this freight during the day, that freight is loaded into Consolidated's equipment, and on their schedule it goes out late in the afternoon or early in the evening for the New England destinations. It will be wholly practical and common sense; in case this deal were approved by the Commission, that such equipment, arriving at New York in the morning, would immediately be taken over by the Consolidated driver and tractor and go on to the New England destination, and in many cases it could

be back in New York, loaded for the south, in time to catch our late schedules out of New York in the evening.

67 Q. You are referring there to the exchange of equipment?

A. To the exchange of equipment; yes, sir. That is not possible today. We are under such a strain to getting equipment that every carrier is very reluctant; as a matter of fact, most of them absolutely refuse to permit their equipment out of their own organization's hands.

I have a great deal of respect for Arbour and his operations, but I would not turn over fifteen to twenty trailers to load with freight for New England today, because I have no way of knowing when I would get those trucks back.

Under that theory, of course, there would be the advantage of being able to provide more transportation service, and it would expedite tremendously the service possible by our organization.

Today we serve into Virginia, the Carolinas, lower Virginia and the Carolinas, with second morning service out of Metropolitan New York area. Under the service possible as I have just outlined it, we would have second morning service from a large number of New England points which is presently third morning service. In a good many cases, we could save 24 hours. That would also be true in the exchanging of freight up in the New York territory.

Q. That would also be true of southern freight, would it not?

A. Oh, yes; all the way through. For instance, Barnwell now exchanges freight with Transportation. It is an extremely  
68 ly troublesome method of handling the freight. We have to have a complete accounting and recording of every piece which is moved in that area. They have to have exactly the same records. There are duplicate records and duplicate offices maintained in keeping those records, and there is a delay involved in it.

In so far as C. O. D. shipments are concerned, they are increasing in importance in the business today. There will be very little doubt, I think, on the part of any shipper as to the financial responsibility of these combined companies, whereas today they may have a doubt as to the financial stability of any one of the individual companies.

I am quite sure that the lack of handling in the direct movement from the point of pick-up to destination, without transfer of freight, would certainly produce less astray shipments and less loss and damage, and, if so, I think those matters are all of keen interest to the shipping public.

I want to again mention the fact that we will be able to provide an increased amount of transportation, and before this year is

out that is going to be tremendously important to most shippers of freight.

Many of the shippers with whom I have talked in connection with this matter have expressed themselves about something that they seem to place greater importance on than I place on it.

69 That is their lack of facilities to handle the great number of trucks coming in from the different companies, but in the great number of shippers that I have talked to, I have yet to find any one that did not like this kind of a set-up when it was explained to him. They would like to have a smaller number of companies to serve their business, and they would like to have less congestion at their platforms. They would like to have fewer number of offices to call for information on their shipments. I got that directly from the shippers themselves. That is something in which they are keenly concerned, and they like very much the idea that through this deal we can provide that service for them.

Q. Will you explain how that can be brought about, Mr. Horton?

A. At this moment there is a Barnwell Truck, a Horton truck, and a Transportation truck backed up at the platform of the North Carolina Finishing Company at Yadkin, N. C.; there is no need for all of those three trucks to be there.

Q. In all probability, not one of the three is full loaded?

A. They are never fully loaded, and those trucks can be used somewhere else to a much greater advantage.

Q. What have you to say as to the question of insurance as applicable to the combined companies, or have you touched on that?

A. I have not, but I should have. My failure to do so was an oversight on my part, because I have a note here to remind me of it.

70 We will make substantial savings in the purchase of insurance, as well as substantial savings in the purchase of gasoline, oil, and tires; there will be less consumption of oils and less consumption of tires because of better handling and better servicing. The savings on those will be substantial!

In the study that I have made on insurance, it indicates, I think, that \$300,000 or more would be saved immediately. Those savings can be made almost as quickly as it is practical for the policies to be written, and, if it is done, there will be a more adequate coverage of the kinds of insurance that we all carry than is now covered for the benefit of one of the individual companies.

Q. Have you covered in this respect the question of repairs of testing machines?

A. Yes; I have covered that.

Q. You have covered that?



A. And I can illustrate. I think I said twice something about the use of less gasoline and oil. I would like to give an exact illustration of that.

When we obtained two or three years ago some very fine, the finest available, rebuilding equipment and some expert men to use that equipment, equipment for the testing of our motors, we conducted a great many experiments with the Ethyl grease of the Standard Oil Company of New Jersey and the various other oil producers, and we have found that by the use of highly

71 skilled mechanics and this equipment—and I must say again it is practically impossible to get it today—but by the use of that we have cut the consumption of gasoline to a very considerable extent. We ran on one head tractor unit less than four miles a gallon—about  $3\frac{3}{4}$  miles a gallon to nearly 5 miles per gallon, and that is a tremendous decrease in the consumption of gasoline.

We also found that we could decrease our delays on the highways because we had fewer breakdowns on the highways; we had less interruptions of service by having the equipment more perfectly serviced in central garages.

These economies I know can be effected; I know that from experience, because, when we took over the Maner Motor Express, when we took over Bull, when we took over White at Baltimore, by centralizing our garages and putting in better equipment and more highly trained personnel, we have decreased very sharply our costs. When we took over White, that made it possible to have a large garage in Baltimore. We have no use for it there but we still have it there. That will be available for Barnwell and Southeastern, both, going through Baltimore, and neither of which has sufficient facilities or services in the Baltimore area.

Q. Are there any other points that you wish to mention that might tend to show that the consolidation of these companies would be in the public interest?

72 A. Well, sir, I know there are; but for the moment I cannot think of them.

Q. How about the financial strength of the company, Mr. Horton?

A. The company will be financially very sound and very strong. We have done everything, I think, to produce that result.

In the beginning, when we studied the financial statements of these eight companies, we wrote out every asset of intangible value, and in these companies now there is no recognition at all given to anything except tangible values; that is, the things you can put your hand on, and we are only issuing preferred stock up to 80 percent of the net worth of each company. In my own case, I

turned in a certain amount of net worth, tangible value, nothing intangible, and I got 80 percent of that amount of preferred stock.

As I said, these companies have got a considerable historical background, and they can be studied for years, particularly for the six years that we have been under the control of the Interstate Commerce Commission. Their reports and accounting statements are exactly in the same form, and we can make up perfect comparisons, one with the other, in all kinds of operations; so that this situation, plus the economies that can be effected by this consolidation, and plus the increased value of the service to the public, would undoubtedly produce a greater volume of business.

73 Q. You refer to 80 percent of the net tangible worth. Was that arrived at by appraisals or reports at all?

A. No appraisals or reports. These are reports filed with the Interstate Commerce Commission.

Q. Have you anything to say with reference to the relations with public regulatory bodies? Would there be any advantage in that respect by the consolidation of these companies?

A. Undoubtedly. They will be easier to control in so far as some of the regulatory bodies are concerned.

Q. If the eight companies are under one operation?

A. Yes; that is right; one operation is easier to control than eight operations.

Mr. COCHRAN. Mr. Examiner, it is about lunch time, is it not?

Exam. BAKER. Yes; do you wish to suspend at this time?

Mr. COCHRAN. We may as well, and after recess we may have a few more questions of this witness.

Exam. BAKER. If it is a convenient time for everybody, we will recess now for lunch.

Mr. COCHRAN. That would suit us very well.

Exam. BAKER. We will recess until 2 o'clock.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

### Additional Appearances

J. B. Dempsey, First National Bank Building, Kingsport, Tenn., appearing for The Mason and Dixon Lines, Incorporated, Kingsport, Tenn., Akers Motor Lines, Gastonia, N. C., Atlanta-Union Point Trucking Company, Inc., Greensboro, Ga., Benton Rapid Express, Savannah, Ga., Blue Ridge Trucking Company, Asheville, N. C., Cedartown-Atlanta Freight Line, Cedartown, Ga., Cumberland Freight Lines, Inc., Nashville, Tenn., Dixie Freight Lines, Atlanta, Ga., J. D. Jordan Truck Line, Centre, Ala., Lewis &

Holmes Motor Freight Corporation, High Point, N. C., Mathews Freight Line, Inc., Thomaston, Ga., New South Express Lines, Inc., Columbia, S. C., R.-C. Motor Lines, Inc., Jacksonville, Fla., Smith Transfer Corporation, Lenoir, N. C., Southern Motor Express, Birmingham, Ala., Wilson Truck Company, Nashville, Tenn., A. A. A. Highway Express, Inc., Atlanta, Ga., Great Southern Trucking Company, Jacksonville, Fla., Booze Truck Line, Roanoke, Va., Colonial Motor Freight Line, High Point, N. C.

Joseph W. Connolly, 1 Franklin Street, Alexandria, Va., appearing for Ford Motor Company.

Exam. BAKER. Let us resume.

Before we resume examination of the witness, I would like to get an estimate from applicant's counsel, if possible, as to the time it will take to present applicant's case.

Mr. COCHRAN. Mr. Examiner, all I can say is this: For instance, on this witness we are going to be but 30 minutes over time on my estimate, and the best we could—it all depends on the cross-examination, of course, but we hope to be able to finish—practically finish this week, if it is possible, by Friday or Saturday, if it is possible, with our last witness, who will be the auditor. We may have to go over into Monday. Now, that is the best estimate.

Exam. BAKER. Can the intervenors state, any of them, as to whether they intend to put on any witnesses or any evidence in their behalf?

Mr. Tobin, were you going to present any evidence?

Mr. TOBIN. Yes, we expect to have a witness.

Exam. BAKER. About how long will it take?

Mr. TOBIN. Well, last time it took most of the day, if I remember correctly.

Exam. BAKER. I beg your pardon?

Mr. TOBIN. Last time it took most of the day, if I remember correctly. It won't take too long, though.

Exam. BAKER. Well, you did not have—

Mr. TOBIN. There was a lot of cross-examination, so far as he was concerned, at the last hearing. We had—Mr. O'Brien, I think, was on the stand.

Exam. BAKER. Are there any other intervenors proposing to introduce any witnesses, Mr. Wiprud?

Mr. WIPRUD. It may be, Mr. Examiner, we will have one witness. It all depends on the course of the hearing. We will be able to tell a little later.

Mr. WOODS. The same statement as made by the other gentleman applies to Super Service. We can't tell until the hearing has progressed a little further, but I don't think we will put on any witnesses, perhaps one.

**Exam. BAKER.** Mr. Cochran, if we had two or three night sessions do you feel that we could finish this week with the entire case?

**Mr. COCHRAN.** I want to be perfectly frank with you. We have an auditor working and a group of auditors working, and they have been working both day and night for some weeks, several weeks, and there are certain adjustments in that work that have not yet been completed. We are having a meeting tonight with that auditor and we will know tonight how long it will take him to get that—the final touches put to his work. If I knew that, I could answer your question, and without it we might have to ask for a delay if we run it too fast.

**Exam. BAKER.** Will you be in a position tomorrow to indicate whether or not—

77 **Mr. COCHRAN.** I certainly will, and I will be glad to do so. I will make it a point to talk it over with my associates and arrive at a possible estimate of the time. Naturally, we want to curtail it as much as possible.

**Exam. BAKER.** I will be glad to do it.

**Mr. FAGG.** Mr. Examiner, so far as we are concerned, we will have no witnesses as we see it now. We think there are a few things to clear up, and if there is cross to clear up a few things, it will satisfy us.

**Exam. BAKER.** Very well.

Are there any other additional appearances at this time?

**Mr. DEMPSEY.** Your Honor, at this time I would like to put in my appearance. J. B. Dempsey of the Mason and Dixon Lines, Kingsport, Tenn., representing the list of carriers, in addition to the Mason and Dixon, that Mr. John M. Miller read into the record this morning, and if it pleases Your Honor, in addition to that list, the Inter-City Trucking Company of Memphis, Tenn.

**Exam. BAKER.** You are a registered practitioner, Mr. Dempsey?

**Mr. DEMPSEY.** I am, sir. If I am permitted to intervene, it will not broaden the scope of the hearing. We are not—don't propose to object to the applicant's application nor sponsor it; only to the extent of protecting the interest of these carriers, wherever it may be.

**Exam. BAKER.** Very well.

78 **Mr. CONNOLLY.** Joseph W. Connolly, Ford Motor Company, Alexandria, Va. I am a registered practitioner and for the time being my interest is that of an observer subject to subsequent change.

**Exam. BAKER.** Very well. You may resume. All right, Mr. Cochran.

H. D. HORTON resumed the stand and testified further, as follows:

Direct examination (continued) by Mr. COCHRAN:

Q. Mr. Horton, before we adjourned for lunch you were discussing the question of issuance of a certain amount of preferred stock and the basis upon which it was to be issued in exchange for stock. Will you explain that again? I don't remember.

A. I was attempting to state my opinion and the reasons for that opinion that this preferred stock was thoroughly sound was due to the fact that all intangible items in statements were removed, leaving nothing but tangible value items in net worth statements and that these statements were prepared from books. All of these carriers' operation of necessity being under control of the Interstate Commerce Commission, their records are kept according to the rules and regulations of Interstate Commerce Commission, and the stock will be issued on statements from systems of accounting laid down by the Interstate Commerce

79. Commission. There will be minor adjustments of necessity to be made because of that you just mentioned to Mr. Examiner just now having to do with minor variations in some classes of accounts that are not in complete detail covered by rules and regulations of the Commission. To whatever extent those minor changes might affect the net operating statement of the combined companies, to that very small extent this issue of stock might exceed by a fraction of a percent, above or below, 80 percent of net tangible value, but it would of necessity have to be a small amount.

Q. Under the terms of the contract, isn't it a fact that each stockholder will secure in exchange for stock preferred stock based upon 80 percent of the net tangible assets, subject to adjustments—

A. Right.

Q. Of the company that is being sold?

A. Right.

Q. And together and in addition to that we will secure a certain number of common shares of stock of the par value of \$1 each; is that correct?

A. That is correct.

Q. Can you say whether or not the number of shares of common stock to be issued under the terms of this contract will exceed the net tangible value of the companies or will be less?

A. It will be less by several hundred thousand dollars.

80 Q. Mr. Horton, there appears in the record an item showing that Transport, Inc., owns quite a number of shares of stock in Associated Transport, Inc., the applicant in this hearing. Will you explain the circumstances under which those shares were transferred to Associated Transfer—Associated Transport, Inc.?



A. The Transport Company in their application to the Commission for a proposed merger of last year had made certain audits of all of the companies in that proposed merger. Since eight of these companies were in that 28 companies of last year, those audits have already been made. I don't know what it would cost to have the audits for 1939 and '40 and those things made for all of these companies again. I don't know; it would be likely a considerable amount of money and take considerable length of time, and since we didn't wish to incur the expense—didn't think it was advisable and necessary to incur that expense in having audits made all over again for these years which are required by the Commission in this hearing, we decided to buy those audits, and we bought them from Transport Company. We gave them \$1 par common stock because we did not have much money. It might have cost a considerable amount of money to have bought those records. We did make a deal with them for 9,000 shares of \$1 par common stock which gave us all of the audits, and so forth, that were made in these companies.

81 Q. Do you know of any other records that were needed other than the audits?

A. As I recall it, it covered all of the records.

Q. All of the records?

A. All of the records.

Q. All of the records that were applicable to these seven companies?

A. Eight companies.

Q. Eight companies, were purchased from Transport, Inc.?

A. That is right.

Q. It included transcript of the testimony in the other case as well as other audits and other records and papers?

A. That is right; the most important of that, however, being the audits because they would have to be reproduced. If we couldn't buy them we would have to go out and get them.

Q. Do you wish to explain how you arrived at 9,000 shares?

A. Well, that barter and trade proposition extended over quite some time, and it was really a barter and trade proposition; estimate on our part of how much we thought we could get the audits made for and estimates on the part of the Transport Company.

Q. In other words, it was a barter and trade?

A. It was a barter and trade proposition.

Mr. COCHRAN. Mr. Examiner, that is the only question we would like to ask Mr. Horton at this time. We would like to recall

82 Mr. Horton whenever the question of Horton Motor Lines, Inc., the details of that company are to be considered. He is submitted to cross-examination.

Exam. BAKER. Cross-examination.

Mr. Fagg. Have you got any questions, Mr. Examiner?

Exam. BAKER. I will reserve my questions until after cross-examination.

Cross-examination by Mr. Fagg:

Q. Mr. Horton, I have before me Docket No. BMC in F-1613, and on the first page thereof it says "60,000 shares of preferred stock." What dividends will that pay, or does the record show that?

A: Where is it, sir?

Q. "Sixty thousand shares of preferred stock, present par value of \$100." What dividend—

A. First page.

Q. Will that pay, if any?

A. It is proposed—

Mr. COCHRAN. You will find that on page 5, the bottom of the page, the answer to that, subsection (d).

Mr. Fagg. Six percent; is that right?

Mr. COCHRAN. Correct.

By Mr. Fagg:

Q. In answer to counsel's question, you spoke about issuing stock to the extent of 80 percent. Eighty percent of what? Was that clear on the record as to what that 80 percent represented, 83 or is there to be additional stock held in the treasury of the consolidated company?

A. I tried to make it clear, sir, that that 80 percent was to be 80 percent of the net tangible worth of each company. As an illustration, if I turned in a company the net value of which was a million dollars, I would receive for that \$800,000 of this 6 percent preferred stock.

Q. And there would be no other stock issues of any kind?

A. No; there would be a common stock issue, but the total issue—in answer to counsel's question, I stated that the total issue of all kinds of stock at par value would be less than the net tangible worth of the companies.

Q. And there would be no treasury stock remaining in the treasury unissued; is that right?

Mr. SULLIVAN. Excuse me, sir.

Mr. COCHRAN. I doubt if he can answer that question. It is contemplated, before the hearing is ended, to have the exact number of shares for which we are asking for approval. It is an exchange and sale, and there will be no treasury stock unless there are shares of treasury stock, for the purpose of taking care of the conversion privileges as set forth in the preferred stock.

Mr. FAGG. And that will be portrayed to the Commission in exhibit form?

Mr. COCHRAN. That is right.

Mr. SULLIVAN. Excuse me. May I have the record show  
84 that we are not talking about treasury stock? We are talking about authorized but unissued stock. I believe that is correct; isn't it, Mr. Fagg?

Mr. FAGG. That is right, but I understand from counsel that that will all be portrayed in an exhibit to be filed with the Commission.

Mr. SULLIVAN. That is right.

By Mr. FAGG:

Q. You spoke about saving \$300,000 pertaining to insurance premiums. Is that per year?

A. Yes, sir.

Q. If the Commission approved this consolidation you would have that saving?

A. Yes.

Q. Thinking of the shippers' and public interests in this proceeding, what have you to say with respect to the load factor as to whether it would be improved or not if the Commission authorized this consolidation?

A. We expect that it will be improved.

Q. You referred to the interchange with approximately 200 other carriers, that is, carriers that are not a party to this petition wherein you would continue through rates and routes with said carriers. Does that mean that you will not add to those joint rates and through routes by expanding if consolidation is granted?

A. I don't understand your question, Mr. Fagg. Are  
85 you intending to ask me that as a result of the consolidation we would establish a policy where we would not make any more interchange connections?

Q. That is correct. In other words—

A. We do not contemplate—

Q. The question is as to whether through this consolidation the Commission is to understand and the public is to understand that you are not to expand your through routes and joint rates?

A. No. No; what I said this morning was that we personally have connection with 225 connecting carriers. As a result of this consolidation, four of those who contemplated to be in this would not have to have an exchange agreement. We would have 221, but if there is any requirement on our part or the shipping public that that 221 be increased, and it is feasible and right and proper

that that be done, it will be increased just as we have always done.

Q. That is the answer to my question. As I understand it, Mr. Horton, you are testifying on the basis of the information supplied here to the Commission in F-1612 as well as F-1613; is that right?

A. Yes, sir.

Q. Can you state for the record, will the total capitalization in dollars of the consolidated operation, if approved by the Commission, will that total capitalization be more or less  
86 than the present individual companies?

A. If both applications are approved by the Commission the capitalization would be one and a half million dollars more than it presently is. No; it would not, for this reason: We are presently putting together companies whose net tangible worth is a fraction over \$5,000,000. We propose to issue against that slightly in excess of \$4,000,000 of preferred stock and something in the neighborhood of 700,000 shares of \$1 common stock. That total capitalization then would be in the neighborhood of \$4,700,000 at par against something over \$5,000,000 of assets. If we are permitted to issue and sell a million and a half dollars of preferred stock, both your capital account and your cash account increase in the same amount, so you would then have a matter of a fraction over six and a half million dollars of capital structure; but we do not contemplate any time the issue of stock in excess or even equal to the net tangible worth of the companies.

Q. Then, as far as the shipper and the public are concerned in this investigation, they are not confronted with inflated or increased capitalization in connection with their transportation service and charges; are they?

A: We have very carefully gone through every statement, every one of these carriers, too, his own statement and everybody else's, and have taken out every such value. There are no franchise values; there are no good will values; there are no  
87 organization values. All of those things have been taken out.

Q. Mr. Horton, I think it would be interesting if you could tell the Commission and—where you refer to the shippers that you conferred with to determine the public interest and shippers' interest in this proceeding, approximately how many shippers did you talk to that said to you that they thought this would be a good thing for the public and shipper?

A. Why, having no reason to contemplate any such question as you ask, I haven't made any such analysis. I will say that over a long period I have talked to many, many shippers, and I don't know of anyone who has opposed the idea. I can say it that way.

Q. About how many did you talk to, a hundred, five hundred?

A. Not five hundred, no. Forty or fifty.

Q. From a public interest and shippers' standpoint, would you sum up your testimony of those interests in this proceeding, if the Commission so granted it, that it would result in lower costs and improved service to the shipper and the public?

A. It will undoubtedly improve the service to the public and should result in economies of operation which, of course, reduce cost.

Q. The result of your study that you made for a number of months indicates a reduction in costs; doesn't it?

A. Yes.

Q. In your opening testimony, you referred to a 35 percent increase, and I did not know whether you meant that was a 35 percent increase in dollars or tons that you were confronted with at present, compared with a year ago.

A. Talking about dollars.

Q. Dollars.

A. Dollars of business.

Q. You also referred to service contracts of three officials of Arrow Carrier. Did you specify or does the record show that you have already submitted in this case the duration of those service contracts?

A. They were made either at or just before the sale—this is my impression—and I may have to be corrected in it, but I am under the impression at the moment that these contracts were made at or just prior to the sale by these men of their interest, which is the stock of Arrow Carrier, to the Transport Company, and I think that took place some time last year, and my impression is that the contracts have five years to run. Certainly we want those contracts to run sufficient long length of time that these men without a contract, if they didn't have a contract, couldn't go out and enter competitive business against us, because they are the only ones who know anything about that operation in Pennsylvania.

Mr. COCHRAN. May I, just for your information and as a part of the record, state that Exhibit F of the Arrow Carrier Corporation winds up with this statement: "Employments and contracts effective when, as, and if the Transport Company takes title and for five years thereafter."

Mr. Fagg. Very well.

Mr. COCHRAN. And that names Ackerman, Buckley, Whitehead, and Mr. Hamilton, whose contract does not extend over into the operation of this company.



By Mr. Fagg:

Q. Is there any term of service contract in connection with the one party, with the McCarthy Equipment Company?

A. There is not, but there is likely to be.

Q. Well, what is the duration—

A. My preference in the matter, were it left to my discretion, would be to give Mr. Butchio not less than a five-year contract.

Q. That has not been agreed to by your board?

A. No. As to exact length of time, Mr. Fagg, no. It has been talked that it would be most advisable for the company if we get Mr. Butchio on a contract. That is well understood by all of the board.

Q. Mr. Horton, in MC-F-1223, there was filed an exhibit showing depreciation charges of the various factors entering into operation of the carriers party to that proceeding. Is it proposed by you, or others, to file a similar depreciation account?

A. What—Mr. Fagg, what is that MC-F-1223?

90 Mr. SULLIVAN. That was the Transport Company.

By Mr. Fagg:

Q. Transport.

A. Transport. I could not identify it by the number. We do have depreciation charges as a part of this exhibit, part of this application.

Mr. COCHRAN. It is already—

Mr. Fagg. It is in the record.

Mr. COCHRAN. Yes, sir.

The WITNESS. It is in the record. It is part of this back page clause. No; it isn't. That is it.

Mr. COCHRAN. Exhibit B-3, Mr. Fagg.

Mr. Fagg. Exhibit B-3?

Mr. COCHRAN. That is correct.

Mr. SULLIVAN. It shows the contract depreciation rates, Mr. Fagg.

Mr. Fagg. For all parties to this petition?

Mr. SULLIVAN. That is right.

By Mr. Fagg:

Q. Mr. Horton, this morning you spoke with respect to the competition, etc., of carriers and called attention of the Examiner to a map on the wall. Is that the same map as appears in F-1612 headed Exhibit BMC-45 C-5?

A. It is, sir; except that the larger map is made in colors to make it more easily noticeable the scope of each company's operation. The routes are the same.

Q. Again having in mind the public interest and shippers' interest in this proceeding, which are the same, do you propose to show what is the competitive feature remaining between other carriers that traverse the same territory that is shown on Exhibit BMC-45 after the consolidation be granted by the Commission?

A. Such evidence will be presented by another witness. It will be presented.

Mr. SULLIVAN. There will be two exhibits, too, Mr. Fagg, if that is what you are driving at.

The WITNESS. There will be.

Mr. COCHRAN. There will be three exhibits.

The WITNESS. But I will not be the one to present it. It will be someone else more familiar than I am.

Mr. FAGG. Mr. Counsel, may I ask you on that score, you will portray in this record the degree of competition that will remain if this consolidation is granted?

Mr. COCHRAN. That is right. You are asking me to make the statement, but we will do the best we can. We have one exhibit showing certain operation of the southern carriers and another showing the eastern and another showing another, and those exhibits will be introduced, and the persons who know the facts and circumstances surrounding the exhibits will be here to testify about that.

Mr. FAGG. Thank you. That is all. Thank you.

By Mr. TOBIN:

Q. Mr. Horton, will you be able to supply the record with a breakdown of your employees at the various branches of your operation?

A. I can in my operation, Mr. Tobin. Not contemplating that question, I didn't develop that. Every other company can do the same thing.

Q. And that will include the various warehouses—

A. Yes.

Q. And terminals?

A. I have the list of the terminals now.

Mr. TOBIN. Yes. That is all.

Exam. BAKER. I was going to request applicant's counsel to furnish a statement which would show the number of employees of each of the carriers involved in this consolidation classified by the type of work in which they are engaged. Will that be done during the course of the hearing?

Mr. COCHRAN. We can, I think, have that within—yes; during this week, I am quite sure.

Mr. SULLIVAN. Including office employees?

Exam. BAKER. All employees.

Mr. COCHRAN. You would like to have it in exhibit form, Mr. Examiner?

Exam. BAKER. I believe it would be preferable to put it in exhibit form.

Mr. COCHRAN. Very well, sir. It will be done, as long as we can do it.

93 Exam. BAKER. Any further cross-examination?

Mr. TOBIN. That is all

By Mr. WIPRUD:

Q. Mr. Horton, you testified, I believe, that you are an officer and director of the Horton Motor Lines, Inc., Conger Realty Company and the Brown Equipment and Manufacturing Company; is that correct?

A. Yes.

Q. Horton Motor Lines, Inc., is a common carrier; is it not?

A. Yes, sir.

Q. What is the business of the Conger Realty Company?

A. It is a realty company. They build warehouses that they rent to Horton Motor Lines, and it was primarily developed to keep from curtailing the small bank credit that Horton Motor Lines had at the time Conger Realty Company was produced. The realty company could, on its own account, borrow money for the building of terminals and Horton Motor Lines was obligated on the lease, whereas otherwise Horton Motor Lines would have to come to the Commission. So I developed a realty company that I wholly owned.

Q. Well, that is taking that in?

A. It takes it in.

Q. What is the business of the Brown Equipment & Manufacturing Company?

A. The original intended purpose of Brown Equipment & Manufacturing Company was to conduct experiments, and  
94 it was done primarily to divorce it from common carrier operations because the Commission doesn't look with too much favor upon a common carrier other than a common carrier under its rights. We felt that we were not getting the best equipment from the manufacturer to do the best job in the highway service, and the Brown Equipment & Manufacturing Company was set out—they were already part of our organization, so we just set them out in one end of the building, and they developed a separate entity. They did that so satisfactorily that they de-

veloped equipment that we now use. They manufacture steel trailers, Markolites and screw jacks, and so forth. It is quite a manufacturing plant at the moment.

Q. Who owns the stock?

A. I own it all.

Q. What is the volume of business in round figures that this company did last year?

A. Brown?

Q. Yes.

A. Give me the exhibit there, please.

Mr. SULLIVAN. When you find it, will you give him the page number so that he can refer to it, please, Mr. Horton?

The WITNESS. Yes, sir. It is on Form BMC-45, Exhibit B-6.

Mr. SULLIVAN. which page?

95 The WITNESS. Continued, which means it will be the fourth page of that exhibit. Total sales for the 12 months of 1940 were \$856,517.03.

By Mr. WIRUP:

Q. And of that amount; approximately how much involved sales to the Horton Motor Lines?

A. A considerable part of it.

Q. Would you say the major portion of it?

A. No; I wouldn't say that, but a considerable portion. We are undoubtedly the largest customer.

Q. Would you say it was over five hundred thousand?

A. Probably that much.

Q. And is it proposed to incorporate the Brown Manufacturing Company in this unification?

A. Yes; it is being sold through this unification.

Q. It will be a wholly owned subsidiary of Associated Transport?

A. It will either be merged in with the assets of that or become a wholly owned subsidiary, and at the moment I can't answer your question.

Q. And is it proposed that the Brown Manufacturing Company—the Brown Equipment & Manufacturing Company continue to sell equipment to the merged company?

A. To any companies, to all companies.

Q. Including the Associated Transport, Incorporated?

96 A. Oh, yes. If it continues separate identity as a wholly owned subsidiary, it would sell to them. If its assets are taken over, as is contemplated, it would not sell. It would produce as a part of the organization.

Q. In other words, then, the Associated Transport, Inc., it would not only be a separate company, it would be a manufacturing company, is that the idea?

A. That could be. It depends entirely on how the corporate affairs are handled.

Q. I believe you testified, Mr. Horton, that you are familiar with the application in this proceeding. Is it proposed to acquire the operations and all the businesses of Consolidated Motor Lines, Inc., and include those operations in the businesses in the final unification of all these companies?

A. No. The Consolidated Lines, or at least the group who own Consolidated Lines, have an operation that is expected to be either sold or abandoned. That is a contract carrier operation. It does not come in this merger.

Q. Does the United Sales come in this merger?

A. No. Yes; it is, because it is wholly owned by Consolidated.

Q. What is the business of United Sales?

Mr. JOSELOFF. May I suggest that the gentleman question an official of Consolidated who will testify and can give that information more expeditiously than Mr. Horton?

Mr. WIPRUD. Yes. Yes.

By Mr. WIPRUD:

Q. There will be an official of Consolidated on the stand?

A. Yes; there will be an official of every company represented here.

Q. Mr. Horton, I believe you testified that Mr. Burt M. Seymour is the president and the treasurer of Associated Transport, Inc.?

A. Yes, sir.

Q. What are Mr. Seymour's other business connections?

A. Mr. Seymour owns either outright or is the majority owner in the Terminal Taxi-Cab Company in New York and two or three other taxicab companies in Engle, which I do not remember.

Mr. COCHRAN. Excuse me just a minute. I would like to say for your information that Mr. Seymour will follow Mr. Horton on the stand.

Q. According to your testimony, Mr. Horton, the Transport Company is still in existence?

A. I understand it is.

Q. Who are the present stockholders?

A. I do not know.

Q. Mr. Seymour, is he an official of the Transport Company?

A. No, sir.

Mr. SULLIVAN. May I say to you, sir, that there will be somebody representing the Transport Company take the stand during the



course of the hearing, some time in the next two or three days, and we can get that information from them at that time. They are not here now or we could get it now.

Mr. WIPRUD. I see.

98

By Mr. WIPRUD:

Q. Referring, Mr. Horton, to Exhibit C-1 in the application in Docket No. 1612, which is the contract between the stockholders of the Horton Transport Company, Inc., and Associated Transport, Inc., which I believe you testified was the standard form of agreement, will you please refer to paragraph 14 of this agreement?

A. Is that the one starting in the middle of page 18, please, sir? You don't have it.

Q. Paragraph 14.

A. Paragraph 14th; yes, sir. I have it.

Q. As I understand the purport of that paragraph, Associated Transport agrees with the vendor companies not to purchase any stock or interest in another motor carrier other than the companies listed in that paragraph prior to the consummation date if the pending application is approved; is that correct?

A. Yes, sir.

Q. Is there any understanding with any other motor company that will be acquired by Associated Transport after the consummation of the pending transaction?

A. We do not.

Mr. COCHRAN. I would like to, in order that there be no confusion in the witness' answer there—it might lead to confusion—Arrow Carrier Company was later added to this group.

The WITNESS. It is a part of this application.

99 Mr. COCHRAN. I understand, but it is not mentioned in this paragraph. They were added by agreement between all the parties.

Mr. WIPRUD. That is the only other company—

Mr. COCHRAN. That is all.

The WITNESS. That is all. The negotiations were in progress at the time on June 11, and they are a party to this application. I thought you understood that.

Mr. WIPRUD. That is all I had.

By Mr. SULLIVAN:

Q. Mr. Horton, I just spoke to your auditor here, and may I ask you, to refresh your recollection, isn't it near 85 to 90 percent of the extent of the business of the Brown Company and to the extent of 10 or 15 percent done with persons outside rather than the figures Mr. Horton suggested earlier?

A. I am not familiar with the percentages or breakdown of that volume of business. I do know that their volume of sales to the public has been increased recently.

Exam. BAKER. Any further cross-examination?

Mr. Woods. Yes, sir.

By Mr. Woods:

Q. Mr. Horton, in your direct examination you referred to the fact that if this application were approved there would be an operation of certain duplicate rights over a portion of the territory involved; is that correct; for a period of time, presumably until the merger was effected?

A. Right.

100 Q. In other words, the merger is not going to be simultaneous? It will take place later?

A. It would have to. That is a physical impossibility that that be done.

Q. Now, referring to the map that you have over here, and particularly to the route showing Southeastern Motor Freight, is it correct that there would be duplicate rights in operation there from Roanoke on into New York, at least into Virginia, with Barnwell's route?

A. Yes, this—there is a territory in which there is a duplicate operation.

Q. And from Lexington north there will be a duplicate right and operation with your own route as well as Barnwell and Southeastern; isn't that correct?

A. No; we do not have rights to serve from that point up to Winchester. We go through, but we do not have—

Q. But now, so far as the Knoxville-to-New York operation generally is concerned, even under the terms of the present application, isn't it possible for you to serve New York from Knoxville by using the combined routes of Transportation, Incorporated, and one of the other carriers without going up over the Southeastern route?

A. Oh, if you wanted to come all the way back down, lap around as you did and increase your run by several hundred miles, that could be done.

101 Q. It wouldn't increase your run by several hundred miles, would it, Mr. Horton, from Knoxville over into North Carolina and then up the coast into New York?

A. A study of the mileage, sir, would indicate that it is a sharp increase in mileage.

Q. Now, did you know, Mr. Horton, that Southeastern Motor Lines accepted voluntarily, pursuant to a stipulation with other carriers, a restriction on any pick-ups north of Roanoke, Va.?

A. No; I did not know that.

Q. And that its compliance order embodies that restriction?

A. I don't know anything about that.

Q. It is true, however, that in the agreement between these various carriers the inclusion of Southeastern in the proposed consolidation or control application is not necessary to the final approval of it; isn't that correct? I am referring particularly now to—I don't have a copy of your application, but I do have a digest that I obtained from the Commission here, and it shows, paragraph 12—you have that, the agreement? I refer particularly to paragraphs 12 (a) and (b) of the agreement.

Mr. JOSELOFF. You mean paragraph 15.

The WITNESS. You must have the wrong number.

(Discussion off the record.)

By Mr. Woods:

102 Q. It is 15. I have it wrong on my digest here. Paragraph 15(a) and (b).

Exam. BAKER. Will the Reporter read that last question?

The WITNESS. Oh, you are asking whether Southeastern is one of the merged companies. They are not under one of the merged companies.

By Mr. Woods:

Q. Under that section 15 (b)?

A. That is right.

Q. So that even if the application of Southeastern were not approved, you could still go ahead with this consolidation?

A. Could be.

Q. Now, Mr. Horton, are you at all familiar with the present status—strike that. Let me put it this way, first—

Mr. JOSELOFF. Mr. Woods, I don't know whether it is going to expedite matters for you or not, but we intend to put on Mr. Brock, president of the Southeastern. Perhaps your questions would be more aptly directed to him.

Mr. Woods. However, I had only three more questions. I wanted to bring out the fact that the operation is not essential to Southeastern.

By Mr. Woods:

Q. Mr. Horton, from your previous questions and answers, is it correct to say that the only point that you couldn't serve without the acquisition of Southeastern would be south of Knoxville, 103 from Nashville to Knoxville, and that brief section between Knoxville and Roanoke?

A. I have made a considerable study as to the operating rights of all of these companies, but I am not sufficiently familiar to say

"yes" to your question, because I am not sure, of my own knowledge.

Q. Well, this question was directed to the map, and let me place it this way, first: If Southeastern has no rights to pick up freight north of Roanoke, then the acquisition of control of Southeastern would give you only the rights from Knoxville to Roanoke unduplicated, and the rights from Nashville to Knoxville; is that correct?

A. A very large part of our consideration of the Southeastern operation was the fact that we could dovetail them into our operation from Washington north with practically no additional cost; whereas the maintenance of those facilities on their own account was very burdensome to their operation. That is one manner in which we do expect to provide economies.

Q. Didn't you also, however, consider it quite valuable to have that entrance into Nashville; in other words, Nashville feeding freight north into some of your other connections?

A. I don't know that Nashville as an individual point was given any special consideration. That particular territory which they serve was given consideration. It is an important territory.

Q. That is Nashville territory?

104 A. I beg your pardon?

Q. That is Nashville territory?

A. I didn't say the Nashville territory. I said the territory that they serve. They serve a wide territory. Nashville is just one of the points on it.

Q. Are you, Mr. Horton, familiar with the fact that the claimed Southeastern rights between Nashville and Knoxville have never been approved by the Commission, and, as a matter of fact, after, I think, two or three hearings have still been denied by the latest report or examiner's order?

A. I understand that there has been some controversy on the matter.

Mr. Woods. That is all.

Exam. BAKER. Any other cross examination?

Mr. Fagg. Mr. Examiner, could I have one question in connection with Exhibit B-3 having to do with depreciation?

Exam. BAKER. You may.

By Mr. Fagg:

Q. Mr. Horton, if you have that exhibit in front of you, B-3—

A. Just a moment. Let me find it. Here it is. All right, sir.

Q. Could you explain, Mr. Horton, what is meant by the words "per contract" in relationship to the percentage depreciation that you show for the year 1940 for the account of various carriers involved in this proceeding?

105 A. One of the provisions of the contract agreed upon after conferences between heads of all of these companies was that we should effect, through stipulated provisions within the contract as to depreciation, certain provisions that, in our opinion, from our knowledge of the business of our own and each other's business, would be the most equitable and the most fair, and these provisions we produce here are designated to produce that result.

Q. And, therefore, the words "per contract" mean that the board of directors of the Associated Transport, Incorporated, have determined that a fair and proper depreciation in percentages is shown on Exhibit B-3 after the words "per contract"?

A. That was not a matter of the handling of the board of directors. That was a matter of cooperative action between heads of the eight companies. See, before this contract was signed by anyone it was made agreeable, wholly agreeable, to the head of every company as representative of their company. They were the ones that made this agreement, not the board of directors of Associated Transport Company.

Q. None of the owners of individual lines jointly agreed to the depreciation percentage?

A. Yes, sir. I agreed with every other company as well as mine, and every other company agreed with every other company.

Mr. Fagg. Thank you.

106 Mr. BURNETT. I have one question.

By Mr. BURNETT:

Q. Mr. Horton, do you know anything about the rates that would be charged after the merger goes through, if the Commission grants it?

A. No.

Q. You are not qualified to say anything about the rates. Thank you.

Exam. BAKER. Any further cross-examination?

(By Mr. SHIELDS):

Q. Mr. Horton, you stated that Mr. Hellerman was treasurer, but his office and duties have been placed with Mr. Seymour during his absence from the company. Can you state whether it is contemplated he will assume the office of treasurer on his return?

A. I can't answer that question, because we know nothing about his return. We hope that he will return some time soon, but Mr. Hellerman and Mr. Davis and Mr. Arnstein were sent to China under the Lend-Lease Bill to keep the Burma Road open.

Q. If he returns soon he will assume those duties?

A. He will be given every consideration.

Mr. SHIELDS. That is all.



Redirect examination by Mr. COCHRAN:

Q. This matter, that will have to be decided by the board of directors?

A. It will have to be decided by the board of directors, yes.

Exam. BAKER. Any additional cross-examination?

107 Mr. COCHRAN. All right, Mr. Horton, you can come down.

Exam. BAKER. I have a few questions.

Mr. COCHRAN. Oh, I beg your pardon. I am sorry.

Exam. BAKER. Mr. Horton, is there any understanding, either express or implied, that any of the persons responsible for the organization of Associated Transport, Inc., would be compensated for their services in connection with sponsoring the organization?

The WITNESS. None whatever.

Exam. BAKER. Is it contemplated that the officers and directors which you have named will continue to serve in those capacities after consummation of this transaction if approved?

The WITNESS. Yes, sir. I speak for myself, emphatically yes, Mr. Examiner; and each member of the board will be on the stand before the hearing is over, and I am quite sure that they will be just as emphatic concerning themselves.

Exam. BAKER. Do I understand that someone will be present to testify in behalf of Arrow Carrier Corporation?

The WITNESS. Yes, sir.

Mr. COCHRAN. Yes, sir.

Exam. BAKER. Who will that be?

Mr. SULLIVAN. Mr. Whitehead and Mr. Ackerman both will be present as to their operations, and Mr. Arnold of the Old Transport Company will be present to identify his contract  
108 and answer such questions as to the relationship between The Transport Company, the vendors in this deal, and the Arrow Carrier Corporation.

Exam. BAKER. Mr. Horton, have any voting trust agreements, agreements with respect to management of Associated Transport, Inc., been entered into?

The WITNESS. None whatever.

Exam. BAKER. Are any such agreements contemplated?

The WITNESS. None. None at all.

Exam. BAKER. With respect to your reference that it was desired to enter into an employment agreement with Mr. Butchio, the contract with McCarthy for acquisition of the stock of McCarthy Freight System, Inc., is not contingent upon the execution of an employment contract with Mr. Butchio; is it?

The WITNESS. No, Mr. Examiner. We give consideration to Mr. Butchio's peculiar case—or particular case as we do in the case of Mr. Ackerman or Mr. Buckley and Mr. Whitehead. We

have an unusual situation not similar in all respects to the owners or partial owners of some of the other companies, and I personally am quite concerned that Mr. Butchio be continued as a part of our organization for several years to come. He is a very valuable man.

**Exam. BAKER.** But there is no contract as of the present date?

**The WITNESS.** No; there is not.

109 **Exam. BAKER.** The application lists certain stockholders of Associate Transport, Inc., with the number of shares of stock held by each which totals 71,480 shares of common stock. Is that the amount of common stock outstanding at the present time?

**The WITNESS.** Seventy-one thousand, sir, I haven't verified that total, but that is—

**Exam. BAKER.** The total does not appear in the application?

**The WITNESS.** If that is the total, that is correct, sir.

**Exam. BAKER.** There have been no additional sales of stock since the filing of the application; is that correct?

**The WITNESS.** No, sir. This indicates the amount of \$1 stock that the organizers put in to defray the expenses plus—which totals sixty—about sixty-two thousand plus the nine thousand shares for which we purchased these records, and so forth, from the Transport. Total about 71,000-odd shares, sir, is right.

**Exam. BAKER.** And there have been no additional shares issued in addition to the shares that are listed in the application—

**The WITNESS.** No, sir.

**Exam. BAKER.** — is that correct? Is it contemplated that that additional common stock will be issued prior to consummation of this transaction?

110 **The WITNESS.** No, sir.

**Exam. BAKER.** In what manner was it determined as to how much stock each of the parties involved would be permitted to subscribe in Associated Transport?

**The WITNESS.** Originally, as a result of the formula that we produced to be the measuring stick of this company—I think possibly I should say one thing that I don't believe has been said as yet. In addition to the preferred stock which is to be issued for approximately 80 percent of the net tangible worth of the company is to be issued a common stock of \$1 par value. That common stock has its first relation to the earnings of the company after tax and after provision for dividends on the preferred stock to be paid to the owners of that company, and we made a computation, each company having its own records as to operations, provisions for income tax, a very close estimate as to the amount of preferred stock that might be issued each company. It was easy to then

ascertain the amount of common stock that each company would receive, the common stock being the measuring stick of their participation in the profits of the company, both in the profits that their operation would pour in and in turn the measuring stick against which common stock dividends would be declared, so we decided in the first instance that each company would subscribe in this \$1 stock to 10 percent of the number of common shares that

111 they were going to get, and we found that on certain individuals that was likely to be a burden and at the same time it did not produce what we were all very anxious to produce, was some situation under which Mr. Seymour could be tied into the company to make his tie-in definite for a long time, not that we distrusted him, but we felt that his participation in the management of his company would inure very greatly to the stockholders' benefit, and we wished to tie him in, and someone among the group produced the theory that we would insist that Seymour buy certain of this stock, we ourselves taking less of it, and we did that so that Seymour bought—I think he bought one-half of this proposed issue of \$1 stock, and the balance of the heads of the companies put up the balance, as is shown in this exhibit. So that is the manner in which that was produced. That was expense money in the first instance, but we used that vehicle to tie Mr. Seymour into the company.

Exam. **BAKER.** Perhaps you would explain the theory behind the basis established in the contract for determining the number of shares of both preferred and common stock that would be issued to the selling stockholders.

The **WITNESS.** In the first instance, sir, we wish to bring to the Commission at this time an application free of everything that we had any reason to believe the Commission might object to. We did not wish to capitalize to a hundred percent the net value  
112 of the company. So we decided on 80 percent as being—leaving a sufficient margin of safety so that the Commission, if they were asked to say that a share of stock of par \$100 was worth a hundred dollars, they could easily say so since they would know that there was \$125 of real tangible value behind it. In the consideration of the common stock we had to reduce—we had to keep within reasonable limit the issues of number of shares of common stock, else, it being a one-dollar par, would run the total capital stock to be issued in excess of the net worth, and we did not wish that, so after many computations we found that the final formula adopted would produce one share of common stock for each \$2 of earnings of the company after taxes and after provisions for dividends, and on preferred stock would produce such

a number of shares of common stock as would not have us capitalized in excess of net tangible value.

**Exam. BAKER.** Was there any particular reason for selecting the year ending April 30, 1941, as a basis for determining that?

**The WITNESS.** We wished to produce the latest possible figures that were practical to produce.

**Exam. BAKER.** There are exceptions made in certain instances to application of the general provisions of the contract with respect to the amount of stock. Taking them one at a time, Barnwell

Warehouse, it is provided that in lieu of the general provisions, the consideration shall be 1,390 shares of preferred and 17,800 shares of common subject to certain adjustments.

113 Could you explain the reason for the exceptions?

**The WITNESS.** That is a mathematical calculation, sir, that had to be developed because peculiarly Barnwell Warehouse & Storage Company owned a fairly good block of Barnwell Brothers Company. Both companies were being sold in here, so we are going to find ourselves faced with buying a company owning stock in that company that we ourselves are, and the computation by auditors developed that that formula would produce for Barnwell and Barnwell Warehouse exactly the same return for the values that they turned in that all the rest of us got.

**Exam. BAKER.** In connection with Moran Transportation Lines, it is provided that in addition to the stock which would be deliverable under the uniform provisions of the contract 29,000 shares in addition would be delivered to the stockholders of that company.

**The WITNESS.** Studies of the Morgan organization indicated that they had been buying from other companies in such manner that the control of the buying could be changed under this proposed unification. They had been buying at such prices that the excess price that they paid, the savings which would accrue to the Moran account, would be the equivalent in their formula of 29,000 shares of common stock.

**Exam. BAKER.** In other words, you feel that their earning 114 power was greater than reflected?

**The WITNESS.** Was decreased in that amount by buying from the people that we bought from.

**Mr. SULLIVAN.** Excuse me. We will have a witness on, and I think Mr. Horton has overlooked one factor. Part of that is accounted for by the fact that the application of the I. C. C. accounting practices to the accounts of the various companies resulted in an injustice to the Morgan Company because of the fact that certain of the buying and, therefore, profits on the disposal of capital assets were reflected in a company owned by the same stockholders, the purchasing company, therefore part of that

was given effect to in this as well as that factor of additional costs of parts, tires, and gasoline and oil and the like.

Exam. BAKER. You will—

Mr. SULLIVAN. We will have a witness, both the accounting witness—I mean the accounting witnesses and Mr. Altwater will touch on that of the Moran Company.

The WITNESS. Speaking for myself, Mr. Examiner, I can say I am thoroughly aware of the situation that produced that, and am in agreement that that is the fair and equitable way in which it should be treated.

Exam. BAKER. I believe the contract itself in self-explanatory in connection with the additional shares of stock to be delivered to Southeastern Motor Lines?

115 The WITNESS. Yes, sir.

Exam. BAKER. In connection with Transportation, Incorporated, it is provided that in lieu of the general provisions, the consideration shall be 5,500 shares of common stock subject to adjustment. Will you explain for the record the reason for that?

The WITNESS. Transportation, Incorporated, is a common carrier operating primarily in North and South Carolina and Georgia and Tennessee. That has lacked executive leadership long schooled in the trucking field and has been hampered in that manner. From our own knowledge, and Mr. Barnwell and myself have a very intimate knowledge of that particular business, its operation is important in this deal, but it had not—did not show a strong net worth statement nor strong operating statement. We were convinced, as we studied its operations, that we would be able to make it a very strong and a very good profit-earning organization, but under the formula they would not have gotten enough in either preferred or common stock to be interested in any kind of a deal, so it became a matter of barter and trade, and that was the final designation of 5,500 shares was what we gave for it.

Exam. BAKER. Actually, they wouldn't have gotten any stock under the provisions of the contract?

The WITNESS. No.

Exam. BAKER. In connection with determining the con-  
116 sideration in the case of Arrow, it was provided that a deduction should be made from net worth to take care of the preferred stock not being acquired under this transaction. There is also certain preferred stock outstanding in the case of Horton Motor Lines. Was it intended that any reduction similar to the case of Arrow would be made?

The WITNESS. It is provided for, sir. It is provided for in our Exhibit G that an amount—that our net asset account be reduced by the amount of that employees' preferred stock, and I have agreed to call it the minute a favorable order might come down



from the Commission that employees' stock will all be called. Provision is made for it in our contract. In the case of the Arrow stock the Transport Company have paid a down payment on an option on the stock of that company, bought certain of the preferred stock, and have not concluded the deal by payment of the final money. We have not required that they go out into the market and buy from those others who own some preferred stock that stock until it is known that this deal is approved by the Commission. Then they have—they have—it is provided, since this is a called stock at 105 per share, that certain deductions be made from their net asset account so that the money will be available with which to call that stock, and that will be done.

**Exam. BAKER.** Is the preferred stock of the Horton Motor Lines callable at par?

117 **The WITNESS.** Yes, sir; par plus accumulated dividends, but there will not be any dividends beyond three months because we pay dividends on it quarterly. That particular stock, Mr. Examiner, has one or two unusual features. It can only be sold to an employee of the company. It stops paying dividends the minute the employee leaves the pay roll of the company. If they attempt to hold the stock they get nothing for it, and it is callable at our option at any time we propose to call that stock in.

**Exam. BAKER.** With the exception of Arrow and Horton, it is true, is it not, that applicant is acquiring all of the outstanding stock of each of the companies here involved?

**The WITNESS.** Yes, sir; they are acquiring it in the case of Horton because before they take over my stock I will have retired this employees' stock; and if the callable provisions of the preferred stock of the Arrow permit such fast handling it will be true in Arrow's case.

**Exam. BAKER.** Mr. Woods referred a while ago to the fact that Arrow Carrier Corporation—perhaps it wasn't Mr. Woods, but Arrow Carrier Corporation is not listed in paragraph 14 as one of the companies with which contracts had been entered into. Have the contracts been amended that have been entered into with the respective stockholders to permit applicant to acquire Arrow's stock?

**The WITNESS.** We called—

118 **Mr. COCHRAN.** Let us refer to the exhibit, then, for your answer to that, if I can find it.

**The WITNESS.** Show me which one it is, will you? Do you know which it is?

**Mr. SULLIVAN.** That is Exhibit J. It sets out the detail, I think.

**Exam. BAKER.** This is what he is referring to, the question—

**Exam. SULLIVAN:** Yes; but I think your answer comes from Exhibit J.

The WITNESS. Yes, sir.

Exam. BAKER. Exhibit J is the contract.

Mr. SULLIVAN. Yes; of the Transport Company.

The WITNESS. Of Arrow's contract; isn't it?

Mr. COCHRAN. It is under Transport.

The WITNESS. Where is it?

Exam. BAKER. Off the record, Mr. Reporter.

(Discussion off the record.)

Exam. BAKER. Will we go back on the record and explain that, please? Back on the record. Mr. Horton, I will repeat my question: Have the contracts entered into with the stockholders of the respective companies been amended to permit Associated Transport, Inc., to acquire the capital stock of Arrow Motor Lines—Arrow Carrier Corporation?

119 The WITNESS. An understanding was reached by the stockholders of all of the companies, and we had a meeting in New York where the designees, each person designated to act for each group of stockholders, met and agreed to the terms and conditions under which Arrow came into the group and exactly the same formula and the same plan that we agreed simultaneously on June 11 as to each company.

Exam. BAKER. Have there been any other amendments to the contracts entered into?

The WITNESS. No.

Exam. BAKER. Are all of the contracts with the respective stockholders identical with the contract contained in the application, the stockholders of Horton Motor Lines?

The WITNESS. Yes, sir.

Exam. BAKER. That is with the exception of the name of the designee—

The WITNESS. Yes, sir.

Exam. BAKER. And the number of shares of stock involved? Paragraph 20 of the contract conditions the effectiveness thereof upon agreement being entered into with the Commission of Internal Revenue and approval by the Secretary of the Treasury with respect to taxes. Has such an agreement been entered into?

The WITNESS. With the Treasury Department?

120 Exam. BAKER. Yes.

The WITNESS. Not as yet. We propose to get from the Treasury Department, if we can get it, a closing agreement indicating that this is a tax-free reorganization. I am quite convinced in my own case that unless such closing agreement can be had I would not go into the detail because I would have to turn around and give all the money to the Government, or most all of it.

Mr. SULLIVAN. Well, conferences leading to that have been had with the parties.

The WITNESS. Conferences leading to that have been had, and we understand that closing agreements will be had.

Mr. SULLIVAN. Well, they wouldn't issue them until after the Commission has decided it here?

The WITNESS. They won't go into it until after the Commission has made their decision.

Exam. BAKER. There is attached to the contract for acquisition of the stock of the Horton Motor Lines an agreement between applicant, B. M. Seymour, and the stockholders of Horton Motor Lines with respect to resale of common stock of applicant. Have similar agreements been entered into with the stockholders of each of the other companies?

The WITNESS. Yes, sir.

Mr. SULLIVAN. All of the dollar stock, Mr. Horton, is covered by similar agreement?

121 The WITNESS. That is what I understand I am answering, when he said it was to all of the other companies, and I said—

Mr. SULLIVAN. Not only Mr. Seymour's, but all of the dollar stock. I mean the question of the stock for original working funds was covered?

Exam. BAKER. The question I wanted to develop is, Are all the persons who are now stockholders of the Transport, Inc.—have they entered into the contract under which they agree not to resell the stock within a period there specified?

The WITNESS. Yes, sir.

Exam. BAKER. Is my interpretation of that agreement correct, that that restriction applies only to the stock which is being purchased cash at \$1 a share?

The WITNESS. That is correct.

Exam. BAKER. It would not apply to the stock—

The WITNESS. We don't restrict the sale of the Seymour stock. He derives any benefit that might accrue under that. He may not sell it because he is not the owner of the stock coming into it combined. In the case of everyone else we will get preferred and common stock for turning in our businesses. In Mr. Seymour's case he doesn't because we are very much interested in seeing that he holds this stock.

Exam. BAKER. Rather, as to whether any of the present or prospective stockholders have entered into any agreements  
122 contemplating resale of the stock which they will obtain by virtue of the acquisition here involved?

The WITNESS. If any of them have, it is not within my knowledge.

Exam. BAKER. You do not have?

The WITNESS. No.

Exam. BAKER. Do you have any plans formulated, any definite plans, with respect to subsequent consolidation of these carriers into applicant?

The WITNESS. That is—I hardly know how to answer that question, Mr. Examiner, because there are so many angles to the thing that I doubt my ability alone to explain the situation so that it will be intelligent. We do have such plans; yes; but that will have—we have to go into the angle of legal right—legal—we have to be controlled by the legal limitations of disposal of assets of a corporation to another corporation and all of those things, so that other than to say that we do contemplate and have plans with which to produce this merger, I cannot go much further than that. We have talked these things many times, and we have developed many ways in which it can be done.

Exam. BAKER. You do propose that applicant shall take over all of the properties of each of the carriers here involved?

The WITNESS. Yes, sir.

123 Exam. BAKER. Within a year?

The WITNESS. Yes, sir.

Exam. BAKER. And that it will assume all of their liabilities?

The WITNESS. Yes, sir.

Exam. BAKER. How about the—

The WITNESS. We propose to do that as fast as it is reasonably practical. We can't name calendar days as to exactly when that can be done. That is what I am trying to avoid.

Exam. BAKER. What about the motor carrier companies? Do you propose to maintain their separate corporate identities, or will they also be consolidated?

The WITNESS. I should say that whatever is the most practical or feasible theory of control will be adopted.

Exam. BAKER. You have no definite plans with regard to those—

The WITNESS. I don't. I don't think I have heard any other member of the board mention it, not in general board meetings.

Exam. BAKER. Would the same thing be true with respect to the subsidiaries of Consolidated Motor Lines—

The WITNESS. Yes, sir.

Exam. BAKER. The motor carrier subsidiaries?

The WITNESS. Yes, sir.

124 Exam. BAKER. That is, you don't know whether or not they will be consolidated?

The WITNESS. No.

**Exam. BAKER.** Would you name the reasons as to why you feel that it is impracticable to effect an immediate consolidation of these carriers?

**The WITNESS.** Well, it is just—it is just a tremendous big job that it is a physical impossibility to do that and continue to serve the public. In the two or three cases of my own experience where we bought a much smaller carrier and absorbed him in our own operation it was a tremendous task and we had a very large organization to do it. Physically, as a practical matter, to throw these companies immediately into one operation is just a practical impossibility. It just can't be done. We can do it step by step over a period of months, but there is just no other way it can be done. If we were to attempt to put it altogether, first thing we would have to do would be stop doing everything and move warehouses and garages, and so forth. We couldn't perform the service and do it at the same time. We can do it step by step, but we couldn't do it a hundred percent at one time.

**Exam. BAKER.** The application in MC-F-1613 states that no commitments have been received with respect to sale of the securities to be offered to the public. Is that still true?

**The WITNESS.** Yes, sir.

**Exam. BAKER.** Have any underwriters been approved, or  
125 any tentative understanding been reached with respect to that?

**The WITNESS.** None whatsoever.

**Exam. BAKER.** Has any consideration been given to the possible solicitation of competitive bids in the marketing of those securities?

**The WITNESS.** We have felt, sir, that this stock would be sufficiently attractive that no trouble would be met in disposing of it, and, having developed that thought, we have given no particular attention to the method in which it would be done.

**Exam. BAKER.** Do you feel that it would be practicable to market the securities by asking for competitive bids from underwriters, or do you feel it preferable to arrange for underwriting through private agreement?

**The WITNESS.** Mr. Examiner, I haven't had sufficient experience of my own in that connection to really give you an intelligent answer. I don't know. I would be guided in that matter by the consensus of opinion of the board of directors.

**Exam. BAKER.** If sold at par, the proceeds of the stock to be issued would amount to a million and a half dollars?

**The WITNESS.** Yes, sir.

**Exam. BAKER.** Can you state by items for what purposes that one and a half million dollars would be used?



The WITNESS. A part of it, and a considerable part of it, would be used for the purchase of equipment with which to take  
126 care of our expanding business. These companies presently operate equipment that costs in excess of \$8,000,000, so if we attempted to provide 10 percent—vehicles to take care of 10 percent increase in business, that would take half of this million and a half from that point alone. I would not like to see much more than that go in new equipment. I would like to see the other go in operating accounts to make more stable and more solid the company.

Exam. BAKER. Have any estimates been made as to how you will segregate that one and a half million dollars?

The WITNESS. No.

Mr. SULLIVAN. There will be some testimony on that along general lines when the accountants are available to take the stand. They are still pursuing that as to items and haven't reached definite conclusions yet that we have been able to discuss.

The WITNESS. We know that we have some liens out, Mr. Examiner, for instance, that are at a fairly high rate of interest with relatively short-term loans. It is entirely possible that some of this money might be used to retire such loans to put the company in a more—less unsound position.

Exam. BAKER. In considering these companies collectively, do you feel that their present working capital is adequate or inadequate?

The WITNESS. For the moment it is, and it is as far as  
127 we can reasonably contemplate the future. Going on beyond a reasonable degree in the future, I don't know. I don't know what is going to be required. That has got to do too much with the cost of labor, the cost of material, and the cost of everything.

Exam. BAKER. You said "for the moment," it is. Do you mean for the moment it is adequate?

The WITNESS. I mean it is adequate for the moment, the cost at which we do business today. Even I don't know what our costs for repairs and costs for labor will be. It could rise so sharply that the money in this company would not be adequate.

Mr. SULLIVAN. I think the Examiner directed his question to the working capital of the company without this million and a half dollars to which you referred.

The WITNESS. It is not adequate. In our own case we are very sharply embarrassed from time to time, and ours is a substantial company.

Exam. BAKER. Upon what basis would you determine the amount of working capital that a carrier reasonably would require?

Mr. SULLIVAN. I don't think there is any set formula that applies to all carriers, sir.

The WITNESS. That has relation, of course, to their needs for funds for expansion and needs for funds to liquidate their obligations of a fixed nature such as bank loans or equipment notes. I don't think there is any form that would apply to them all. You have to study each one on its own funds. This million and a half dollars very well does the job for these particular eight companies. It might not be half enough for eight other companies, or it might be twice as much, but it does the job for these eight companies.

Mr. SULLIVAN. And that, Mr. Horton, was approved from discussions before the million and a half was weighed with respect to operating these companies as a group?

The WITNESS. Yes, sir. Yes, sir.

Mr. SULLIVAN. Otherwise, if they were to get an adequate amount of working capital individually, assuming there was some miracle before individually they could get it, it would require much more than a million and a half dollars?

The WITNESS. Yes, sir.

Exam. BAKER. I think probably the Reporter needs a rest. We will recess for 10 minutes.

(There was a short recess taken.)

Exam. BAKER. Come to order, please.

Mr. Cochran—

Mr. COCHRAN. Yes, sir.

Exam. BAKER. Is it anticipated that you will introduce any evidence detailing the economies which are anticipated will result from this unification?

129 Mr. COCHRAN. Mr. Seymour will be on the stand following Mr. Horton, and he has a rather detailed statement to make concerning economies.

Exam. BAKER. Mr. Horton, in case this proposed consolidation is effected, how is it proposed that the operations would thereafter be conducted? Would there be any separation into divisions?

The WITNESS. Oh, yes; there would be. It would be conducted by divisions, sir.

Exam. BAKER. And is it anticipated that the officers of the carriers now involved would be in charge of the respective divisions—

The WITNESS. Yes, sir.

Exam. BAKER. In their territory?

The WITNESS. That is contemplated, sir.

Exam. BAKER. You have named a number of advantages in the transaction. Can you think of any disadvantages of a large motor carrier as opposed to a small motor carrier?

The WITNESS. Each has its advantages, Mr. Examiner. Their advantages vary so or are so different that it is difficult to make a comparison. I know that the large motor carrier is—has—less flexible operation by virtue of their size. The small motor carrier, in my experience—and I have been a small motor carrier; I know that—can do—they can change at will. They can change  
 130 the policies of the company by taking off their cap and they can decide to do something by walking down the street, getting a Coca-cola. A large company cannot move that fast. It is more cumbersome. The small motor carrier can identify himself—being a small motor carrier, he usually has a smaller number of customers, and he can establish an intimacy of relation with his customers. There may be neighbors and friends and aunts and uncles and cousins to the extent that the large motor carrier can never hope to do. The only way in the world that the large motor carrier can attempt to compete with the small motor carrier is attempt to give better service over a long, long period of time than the smaller motor carrier can give. He cannot develop the intimacy of relationship that the smaller motor carrier can develop.

Exam. BAKER. Do you anticipate that there would be any increase in overhead expenses as opposed to the small carriers as an aggregate?

The WITNESS. Any increase in the overhead of the small carriers?

Exam. BAKER. I will change that question. Do you anticipate that the overhead expense, after the consolidation here proposed, would be more or less than the aggregate overhead expense of the carriers involved at the present time?

The WITNESS. Well, sir, I just have no way of knowing what  
 131 the aggregate overhead expense of small carriers might conceivably be.

Mr. SULLIVAN. He means these carriers, Mr. Horton.

The WITNESS. These eight carriers?

Mr. SULLIVAN. Yes.

Exam. BAKER. That is right.

The WITNESS. There will be less. There will be less operating overhead.

Exam. BAKER. Do you anticipate that the consolidated organization would retain the traffic presently handled by the constituent carriers?

The WITNESS. Yes, sir; with an increase to that traffic.

Exam. BAKER. I notice that in the case of all except one of the carriers here involved, there was a substantial increase in operating revenues in 1940 over 1939, but, except for the two New England carriers, McCarthy and Consolidated, I believe there was a reduc-

tion in net income. Can you explain why that was? Is there any general explanation for it?

The WITNESS. There is, so far as it applies to the South Atlantic Seaboard. The year 1940 was a chaotic year from a truck operator's standpoint. The flow of traffic, which generally is fairly steady and in reasonably even amounts both north and south, were greatly disrupted last year. In our own experience we would have a heavy flow of traffic north-bound for two or three years' period with return vehicles lightly loaded. The balance of freight  
132 was badly out of adjustment, and in the next two or three weeks we would find the situation reversed. I think that New England carriers suffer less from that unusual situation than others, because I think that they—the increase in business started in New England, and I think that the demand for machine tools largely supplied out of New England developed a stronger tone of business in New England than was true in the South Atlantic States.

Exam. BAKER. Would consummation of the transactions here proposed result in the displacement of any of the employees of the carriers involved?

The WITNESS. On the contrary, we are likely to be much perturbed about our ability to get the employees needed. There will not be any displacement of employees.

Exam. BAKER. Are you having any difficulty at the present time in obtaining sufficient employees?

The WITNESS. Yes, sir.

Exam. BAKER. Your answer was "yes"?

The WITNESS. Yes, sir.

Exam. BAKER. Is it anticipated that any of such employees would have to change their places of employment?

The WITNESS. A very small amount of change. There might be, in the case of moving a warehouse from Shelby to Ashboro, moving it within the same State 50 or 75 miles, but that is likely to be all. The most of such changes that might be imagined  
133 to come out of such a unification will not come because we will use the same man, except in a different manner, in an attempt to eliminate confusion and delay within our own organizations.

Exam. BAKER. Has applicant any plans for alleviating any hardships that might result to an employee as a result of a transfer of his place of employment?

The WITNESS. We haven't anticipated such transfer, sir. To such minor extent—just as in my own case. We have never had any difficulty with that at all. When a man is transferred he usually goes to a better job.

Exam. BAKER. Do you ordinarily pay him—

The WITNESS. If a man has to be transferred he just can't make the grade with the company. Our people don't move downstairs. They move up or move out.

Exam. BAKER. What I had in mind is, in case a terminal is eliminated, and you establish a terminal or enlarge a terminal at another city, it might be necessary to move employees from one city to another?

The WITNESS. We take care of that. Same provision.

Exam. BAKER. But, to your knowledge, applicant has made no definite plans in that respect?

The WITNESS. No. We know—I can say this, sir, as a policy: That I am confident that every one of the board would agree on instantly that our need for good employees is so great that we  
134 are going to be very careful that we are not going to do anything that they would consider to be unfair treatment of them.

Exam. BAKER. Do I understand it Mr. Horton will be recalled to testify, particularly as to Horton Motor Lines?

Mr. COCHRAN. That is right.

Exam. BAKER. That is all the questions I have.

Mr. COCHRAN. May I just ask one further question, Mr. Horton?

By Mr. COCHRAN:

Q. You spoke of operating the consolidated companies in divisions?

A. Yes, sir.

Q. What particular reason—would you attempt to maintain their names, if it is possible, for a while under a division of, say, Associated Transport?

A. Oh, yes; I would like to—

Q. For what particular—

A. We certainly would like to have the Consolidated Division or the Moran Division, because those names have tremendous value and goodwill, and we would not like to have that eliminated until such time as Associated Transport may have developed on its own account in any such operations goodwill of its own account. We do not want to too quickly change the identity of these organizations who have been performing these satisfactory services for a long time by throwing onto the public a new name with which they are not familiar.

135 Q. That phase of the operations would not affect the consolidation of the company or delay it?

A. No; and in further answer to the Examiner's question just before recess, I know that we can transfer the assets of the corporation to the top company very quickly, to the Associated Trans-



port Company. That can be done just as quickly as certain legal requirements can be met, such as a very short length of time, but I at the time had the idea that his questioning was directed wholly to complete integration of operations. It isn't physically possible to take five warehouses in New York City and move them overnight into any one location. There is no one location available to do the job.

Q. Is it contemplated, in the event this application is approved and that there is a consolidation of these companies, that it will be made effective as speedily as possible, giving consideration to traffic as it is now being operated and accounting systems, and the various and sundry items that would have to be brought together into the group?

A. Yes; recognizing that many of the economies we hope to produce in this unification can only come after the elimination of duplicate expense. Certainly, as a matter of practical economy, we wish to produce that just as fast as we can.

Mr. SULLIVAN. Well, in that connection, Mr. Horton, lest there be any false impression here, the reason we suggest in the application that it would take a year to bring about this  
136 complete consolidation was for certain definite reasons; was it?

A. Yes, sir.

By Mr. SULLIVAN:

Q. I mean without giving the reasons?

A. Yes, sir.

Q. And moving into those reasons, was there the question—and you go ahead and elaborate on it—of using the combined experience of the persons who personally constitute the board of directors to determine the manner in which this complete consolidation should be brought about?

A. That is true.

Q. Will you tell us some of the reasons why you weren't in a position, say, last week or last month, to reach a direct plan to lay before the Commission at this time, a step as to why you might put part of Moran and Consolidated together, or Barnwell and Horton together, or something of that sort?

A. Well, the board of directors of this company have only been in existence since the 11th day of June, during which time we have been tremendously busy producing this application and all of the things that go with it. In the many conferences that I have had with the individuals making up the board and with the board itself, I know that these things are contemplated, that it is a part of the plan, but we just have not had time to say: "This week we will do this thing, and next week we will do this thing."

137 Q. Well, is there a further question, perhaps along the same line, as to perhaps the willingness of the persons involved to produce their books for the examination completely, if it is to be presented to a man that will be his mortal competitor?

A. That is true. Mr. Barnwell and I have talked many times about the overlapping expense within our operations, and I know that he has made his studies on it and I know that I have made my own studies, and we have checked on some of the notes. I would not reveal the inner secrets of my business to Mr. Barnwell because this application might be denied, and he is a virile and active competitor, and I just would not want him to know all the secrets of my business, nor he in turn would not want to reveal all of the secrets of his business to me until this application is approved. There are many things that can be done that will better the service and produce economies.

Q. Aside from that, Mr. Horton, there are certain things which can be taken care of but which necessarily take a reasonable time to accomplish unless you are going to throw money out of the window, such as the point of expiration of license dates?

A. The expiration of insurance dates is also an important question. If all of those insurance policies were canceled out it would constitute a serious loss. If each policy could be continued until its expiration date, and then be picked up by the form of insurance, we would not have that loss.

Q. And unless the insurance policy is among the groups  
138 written by various insurance companies, it really is necessary to let them expire before they can be advantageously replaced through one or more insurance carriers?

A. That is right.

Q. In other words, you have the task of consolidating the insurance of these various groups as well as the consolidation of operations?

A. We have the same thing as to license plates. That again involves a lot of money.

Q. And those plates expire more or less about the same period of time, along towards the end of the year?

A. And the relicensing will require a considerable study as to the placement of this equipment.

Q. Some of these carriers, particularly in the North, have some intrastate rights, and have their equipment covered with intrastate plates which would raise questions of transfer of those plates which would in turn take time?

A. That is right.

Q. Including their rights to operate in intrastate?

A. That is what I meant when I said the practical things we had to do just requires some time. It would be thoroughly im-

practical, in my opinion, to immediately relicense all of the equipment as we at the moment might decide it might be operated, knowing that further developed plans of three months later might show that equipment might be operated in territory not licensed, and to throw out all of our equipment we couldn't abandon all the portion we do have now.

Q. Does it boil down to this, Mr. Horton: That considerable consideration was given to the minimum period which these experienced operating heads felt would be reasonably necessary in order to establish the complete consolidation and a sound basis without undue waste of assets and undue expenses?

A. That is right. We believe we can produce a very large share of the complete unification within a year.

Q. It is felt that we could complete it all unless there is some legal difficulty beyond our control which blocked it?

A. That is right.

Q. Such as some State refusing to agree that the Interstate Commerce Act completely supersedes their power, something that we can't foretell at this time.

A. That is right.

Mr. SULLIVAN. That is all the questions I have.

Mr. COCHRAN. That is all.

Exam. BAKER. One other question, Mr. Horton: In the hearing in the proceedings last year on the application of the Transport Company, there was some evidence as to plans of that company to establish an insurance subsidiary for the purpose of carrying its own insurance. Have there been any similar plans in connection with Associated Transport, Inc?

The WITNESS. No; not as developing an insurance company. We have made comparisons in our talks. I have had them myself with Mr. Arbour. Mr. Arbour's company is a self-insurer and our own company of approximately the same size is not a self-insurer. We have talked between ourselves as to the advantages and disadvantages of each form of insurance handling. We agreed, I think, that whichever, in a more careful study, could be made available without reluctance on the part of any company after a favorable opinion by the Commission, that whatever is the best, most feasible and most economical method is the method we will follow. We do not contemplate establishing an insurance company.

Exam. BAKER. Mr. Cochran, do you desire to offer Exhibit No. 1 in evidence?

Mr. COCHRAN. Yes; it is marked for identification. I would like to offer it in evidence at this time.

Exam. BAKER. Exhibit marked for identification as Applicant's No. 1, will be received in evidence.

(Exhibit No. 1, Witness Horton, received in evidence.)

Exam. BAKER. Witness excused.

(Witness excused.)

Mr. COCHRAN. Mr. Seymour.

B. M. SEYMOUR, being first duly sworn, testified as follows:

141 Direct examination by Mr. COCHRAN:

Q. Mr. Seymour, what is your place of residence?

A. 42 Bradford Road, Scarsdale, N. Y.

Q. What are your business connections?

A. I am president of the Terminal System of New York City, president of Yellow Products of New York City, and president of Metropolitan Securities Holding Company, also of New York City.

Q. You are also president of Associated Transport, Inc.; are you not?

A. That is correct.

Q. President and treasurer?

A. Yes.

Q. Will you describe those companies, the activities of those three companies you just referred to—first referred to.

A. Terminal System is a company that operates about 575 taxicabs in New York City. The company serves the railroads in New York. Metropolitan Securities Holding Corporation is a company that owns half of the stock of Metropolitan Distributors, which is a truck leasing company operating in New York and in Jersey about 2,000 trucks. It also owns all of the stock of a truck and taxicab selling company. Yellow Products is a seller of gasoline and oil products.

Q. What connection have you, if any, or what financial interest have you, if any, in any motor carrier, common carrier  
142 by motor, common carrier by rail, or common carrier by water?

A. I own, I think it is, 200 shares of preferred stock of the Keeshin Company. That is the only interest that I have other than Associated Transport.

Q. Do you have any idea what percentage of the voting stock that 200 shares represents?

A. I don't know what percentage. I know it is very small.

Q. As much as 5 percent?

A. I would think less than that.

Q. Will you state how you became connected with the group of people who formed Associated Transport, Inc., and later on developed contracts and applications on file in this hearing?

A. The first conversation that I had, in so far as the Associated Transport is concerned, would go back to probably last December. I had conversations with Mr. Arbour and with Mr. Horton, and with all of the gentlemen who are presently here representing their respective properties, and several who are not here, and it was a result of those early conversations that conversations did become more serious the early part of this year, finally culminating in the application which is now being heard.

Q. You as president of Associated Transport, Inc., executed the contracts on behalf of that company that are now represented in this application. You, also, as president of Associated Transport, signed this application; is that correct?

143. A. Yes, sir; I did that upon the unanimous approval and instructions of the board of directors.

Q. You heard Mr. Horton's statement today on the witness stand, did you not—statements I meant to say?

A. I did.

Q. Are the statements with reference to the officers and directors of Associated Transport correct?

A. Yes, sir.

Q. I believe your salary, he stated, was \$3,000 a month or \$36,000 a year; is that correct?

A. Yes, that is correct.

Q. Are you acquainted in detail with the main contracts executed by these different companies and Associated Transport, as well as the exhibits attached thereto?

A. I am.

Q. Is it a fact that all of those contracts are similar in character, with certain small minor exceptions such as dates and such as names and figures with reference to dollar stock?

A. The main contract is identical. The variance is in the exhibits.

Q. That is true both as to carrier companies and affiliated companies?

A. Yes.

Q. Does this application contain all of the exhibits of Horton Motor Lines and Conger Realty Company?

144. A. Yes.

Q. Does this application contain all of the exhibits of both common carriers and affiliated where there are differences in the exhibits in the case of Conger or Horton, as the case may be?

A. That is correct.

Q. You are prepared to answer any questions concerning any of the exhibits, or concerning the terms of the contract, are you not?



A. I am.

Q. You are the owner now of a certain number of shares of stock of Associated Transport, Inc. Will you state briefly how you came into possession of those shares?

A. The offer, in so far as the 31,000-odd shares of stock is concerned, was originally made to me in behalf of all of the interested designees by either Mr. Horton or Mr. Arbour, or both. They stated that they were anxious that I have a proprietary interest in the business if I were going to manage the business for them. On the other hand, they likewise insisted that they felt it was only fair and reasonable that any stock which I purchased be surrounded with—with limitations as to my ability to sell it, which I was entirely agreeable to do. The transaction was finally completed on the basis that, as against the—some \$62,000 which the sale of that number of common shares would produce which, in the  
145 opinion of everyone, was about what was going to be necessary to defray the cost of accounting and legal expense and such other expense necessary, incident to the prosecution of this application, would be about that amount, and on that basis I subscribed for half of the stock and paid for it some fifteen or sixteen thousand in cash, and gave my—gave my secured note or supported by collateral for the balance. On that basis, of course, if the application be denied, why, my loss proportionately would be little out of line because the loss for the other half would be distributed over some other hundred or 125 stockholders. However, I felt that it was altogether a fair proposition and it was set up that way.

Q. From the statement you have just made, do you mean to say that unless this application is approved the stock you purchased from Associated Transport will probably have no value?

A. I am very certain of it.

Q. You will be reimbursed, to some extent, by reason of the fact that you have had an opportunity to make a salary working for Associated Transport during this period of time?

A. That is correct.

Q. You heard Mr. Horton's statement, did you not, Mr. Seymour, in reference to the purchase of certain records, transcripts of testimony, audit reports, and so forth, from Transport, Inc.

Do you agree with the statements he made without repeating  
146 the testimony, or do you wish to make any additional statements?

A. I think at this point, Mr. Cochran, it might be well if I read into the record my reasons, the most important reasons, which have prompted the Associated Transport application, and from that I would think we would then be in a better position. We would have established a better foundation for detailed testimony.

Q. All right, Mr. Seymour, if you wish to go ahead with that, you may do so at this point. In the first place, did you prepare that statement?

A. I did.

Q. Will you hand the Examiner a copy, please?

A. Yes.

Mr. COCHRAN. It is a prepared statement, Mr. Examiner, that Mr. Seymour wishes to read at this time.

The WITNESS. I shall read it slowly.

By Mr. COCHRAN:

Q. Please read it slowly so that it can be understood by the—

A. First, and most important, is whether the proposed consolidation of the eight carrier companies and the four noncarrier companies would be consistent with the public interest.

Seven of the carrier companies are and have been successful in the territory they serve, and the owners have, over the past six months, devoted their time assiduously to the difficult and  
147 generally considered impossible task of integrating many companies on the basis of a 100 percent exchange of stock.

The plan is in fact a cooperative venture contemplating the issuance of Associated Transport preferred stock up to 80 percent of net worth without equipment or real estate appraisals and common stock on the basis of one share for each \$2 of net earnings after preferred dividends and all taxes for the period ending April 30, 1941. That has reference to the formula, implied. We are gratified that we have completed our negotiations in such form that there is not presented with this application any problem as to property values, employment contracts, or as to the assistance of bankers and organizers.

Whether the approval of the application would be consistent with the public interest leaves only for consideration whether there remains substantial motor carrier competition and whether service would improve. On the subject of competition, Chairman Eastman stated, in his opinion in the Transport case, that it was "the most ambitious attempt so far to create a unit of large size." He did not, however, feel that there would be a lack of motor carrier competition. This application includes but eight of the twenty-eight carrier companies involved in the Transport application.

If one or twenty consolidations or expansions of operations failed in the past to produce economies or improve service,  
148 it would still be no criterion in so far as our contentions are concerned because where you find successful business, large or small, you find good management. The properties included in this application, with one exception, are outstandingly

successful and now comparatively large, and the same men who built them from the ground up would continue to manage the applicant company where, in the case of most of them, substantially everything they have would be invested.

The test of the ability of these men to work in harness is evidenced by the months of negotiation and the result produced. Before self-made men, such as these, put their properties into a common pot, there must be a genuine confidence and trust, a complete reversal of some months ago, of suspicion and distrust, engendered by years of bitter competition. Men who build large businesses from small beginnings have an understandable pride. Considering these facts, and that it is proposed to exchange stock of successful businesses, it is easy to understand that there is no question in the minds of these men who know their business that the advantages are substantial, that economies would be produced and a more efficient service performed, and it is certainly axiomatic that the shipper automatically becomes a joint beneficiary in any benefits flowing to the company, which would result from improved service at a lower cost.

There is no question that through movement of freight will be expedited by from 12 to 36 hours, depending upon the 149 transfers eliminated. Our national defense can effectively be served when 3,500 pieces of equipment can be concentrated at any given point along the Atlantic Seaboard within 24 hours, and certainly no form of transportation could be more flexible than the applicant company under single ownership. Consolidation of the eight carrier companies produces a complete answer to the urgent problem of maximum utilization of equipment.

If it be assumed that any employee would lose his job as a consequence of the proposed consolidation, such assumption cannot be supported. Week by week the labor shortage becomes more acute and volume continues to increase. If the trend of volume increase of the past four years continues without considering additional increase resulting from better service, which applicant could supply, then the problem of securing even sufficient labor will become increasingly serious. It is, on the other hand, a fact that increased efficiency will make it possible to handle sharply increasing volume without employing as many additional people, which would be fortunate under conditions presently existing.

I will now address myself briefly to the subject of operating economies. For purposes of comparison, I am using expense figures for the year ending April 30, 1941, for both carrier and non-carrier companies.

150 Insurance and safety expense: In informal discussions with officials of insurance companies, I have ascertained that present insurance costs can be reduced by approximately \$275,000 annually. Insurance and safety expense for the 12 months ending April 30, '41, totaled \$1,055,686.86.

Sales tariff and advertising expense: A maximum saving of \$150,000 per year will be effected against the 12 months' total of \$734,893.25. Obviously, freight solicitation must be streamlined and overlapping of solicitation eliminated.

Maintenance and garage expense: By the establishment of three well-equipped central repair shops, the inauguration of unit rebuilding, presently so necessary, and a program of preventive maintenance, it is our considered judgment that we can reduce this expense by \$450,000 annually. Total expense under this heading for the 12 months was \$2,273,441.55. We have taken into account increases in tire expense.

Terminal expense: For the 12 months under discussion, the terminal expense was \$5,305,245.78. Under existing conditions, a very considerable time will be required to realize the full saving possible under single ownership. Of course, there would be many terminal changes quickly made. This would be true in 151 the case of Horton and Barnwell and Moran and the New York Division of Consolidated. Wherever one terminal can be used for two it will be done. Much new terminal construction would have to be undertaken. After careful study we feel that terminal expense could be reduced next year by \$250,000 and by \$400,000 the second year. These projections would not be affected by terminal expansion due to volume increase. These reductions are exclusive of savings in the expense of pick-up and delivery service and local cartage, which could be reduced by \$300,000. This is about 20 percent of the 12 months' expense.

Transportation expense: It is known that reductions in this account will be offset by increasing cost of gasoline and oil and motor fuel taxes. There would be no pay-roll reductions. Our collective opinion is that this account will increase \$125,000. The 12 months totaled \$4,691,932.90.

Administrative and general expense: Last year's expense under this heading was \$1,844,016.22. Careful study indicates an easily achievable saving of \$175,000 annually to be completely realized within 12 months. Forty percent of this reduction can be saved on communication cost alone. These projections total \$1,600,000, less \$275,000, representing increase in transportation expense 152 and \$150,000 for expenses of the central office. The net economies show \$1,325,000 before taxes. As impressive as this figure may appear, we consider it not only conservative but ridiculously low.

At that point I might say that there are many here who have made careful studies of those who are interested, and their figure averages about twice the figure that I have stated. Contributions to earnings through greater utilization of equipment and reduced freight handling can, in my opinion, equal the direct expense reductions we have projected, but we deem it conservative to consider these additional earnings as a cushion for increased taxes. We have been assured by large commercial banking institutions that money for our needs is available to purchase equipment for cash at  $2\frac{1}{2}$  to 3 percent interest. This would represent a very substantial saving as against interest rates heretofore and presently charged.

Requirement for working capital: In the consolidated statement, the cash on hand, exclusive of accounts receivable, is adequate for one week's operation. So long as volume continues to increase and with increasing taxes, these companies individually cannot hope to improve their financial position against the downswing in business which many feel is inevitable, due to world dislocation.

153 With working capital of \$1,500,000 it will be possible to purchase equipment for cash with  $2\frac{1}{2}$  to 3 percent money. It is believed that no great difficulty will be experienced in selling 15,000 shares of 6 percent convertible preferred when the companies are presently earning, without considering reductions in expense and other additions to earnings, about six times preferred dividend requirements.

General comments: I previously stated that there was sound reasoning back of this unusual application. These reasons I can summarize as follows:

There is a desire to distribute the risks which are inherent in this business. There is a conviction that no other plan will provide the same protection against uncertainties of the future. There is the fact that only by this means will it be possible to effect operating economies, reduce freight handling, and improve the pay-load factor, to secure money for longer periods at low interest rates, to raise urgently needed capital. How else can cash dividends be paid on common stock in a business which expands 35 percent each year?

There is finally the all-impelling reason—security. The owners would protect their families against paying inheritance taxes with trucks and terminals by perpetuating their business through continuity of management having a proprietary interest.

154 Lastly there follows repetitious as well as additional reasons why this consolidation is consistent with the public interest. It would make possible a much greater utilization of



equipment. It would facilitate through movement of freight, shortening the time between New England and New York State by from 12 to 36 hours.

It would require fewer pick-up and delivery trucks. In New York City, as an example, one such service could do the job of the present six. It would leave substantial competition as is illustrated by the charts we have prepared and which will be introduced. It would be possible for a well financed and sound company to solve more of its own technological and terminal problems, thereby reducing road failures and speeding up freight handling at terminals.

In conclusion: This consolidation would not be encouraging "bigness" in the motor-freight industry but provide the only means of offsetting rapidly increasing operating costs and higher taxes. How else can even present rate levels be maintained and the public interest better served?

It is the intention of the applicant to become the sole operating company just as quickly as it is legally and practically possible, with the expectation that it will operate present companies as divisions until such time as Associated Transport is as well known and enjoys the same good will as the present operating companies.

Q. Who is contemplated being in charge of these divisions upon the consolidation, if it is permitted, Mr. Seymour?

A. Same gentlemen who have built the businesses.

Q. Those gentlemen who have been referred to are also members of the board of directors of Transport; are they not?

A. They are the only members of the board of directors other than myself.

Q. And Mr. Arnold?

A. Representing Transport, yes.

Q. About how long would it take to bring about a consolidation and merger of these companies in the event the application is approved? I mean an effective unification of operations?

A. Well, I would certainly think, Mr. Cochran, that unless we encounter obstacles that are not anticipated, that certainly the year which we have stated could be bettered.

Q. You are satisfied it could be all done well within one year, complete unification of operation?

A. That is my opinion.

Q. Going back to the question I asked you a while ago, as I stated, you heard Mr. Horton's testimony with reference to the purchase of Transport records, Transport, Inc., records. Was that statement in accordance with your understanding?

A. Yes, it was.

Q. Mr. Seymour, have you any understanding or agreement with any person whereby you may receive from any source any additional stock in Associated Transport, Inc.?

A. None at all. I would also like to add to my question, in so far as the material from Transport Company is concerned, by the payment of 9,000 shares we become the owners of everything that they have, audits and—

Q. All records?

A. Engineering studies and records of every character:

Mr. COCHRAN. That is true.

By Mr. SULLIVAN:

Q. By that last answer you didn't mean there the corporate records?

A. No. No.

Q. Or any of their stock or anything of that sort? They are a separate entity?

A. No.

Q. You meant the records applicable to this?

A. I meant our engineering records and studies and everything—

Mr. COCHRAN. Mr. Examiner, the witness is ready for cross-examination.

Exam. BAKER. Cross-examination.

Cross-examination by Mr. FAGG:

Q. Mr. Seymour, did you hear the testimony of Mr. Horton?

137 A. I did.

Q. Both direct and cross?

A. Yes, sir.

Q. Would you say that the public interest would include the shippers? Does it not? The public interest, does that include the shipper? The term "public interest," does that include the shipper and receiver?

A. Yes, sir.

Q. Would you say that their interest in this consolidation, if granted by the Commission, would be to their benefit?

A. Very decidedly.

Q. For what reason would it be to their benefit?

A. For a combination of reasons, Mr. Fagg. First, as I have previously stated, I know of no way that a motor freight system can continue to do a good job unless something is done to offset the increasing costs of doing business, and certainly in doing that for themselves they must likewise do the same kind of a job for the shipper. There can be no question that under single ownership that

the movement of freight can be substantially expedited and there can likewise be no question that in all contacts with shippers those things which are important, or those things which are matters of irritation can, to a very great extent, be eliminated.

Q. And are you familiar with the provisions of the Act, Part II, that requires the carriers to establish their rates based upon economical and efficient operation cost plus a fair profit?

A. I am acquainted with them. I am not a student of rate making.

Q. You are acquainted with that provision in the Act, though?

A. Yes. Yes, I am.

Q. And you think that if the Commission grants the application filed and heard here today that that will react to the benefit of reducing the cost in operation of the consolidated companies?

A. I will answer your question this way, Mr. Fagg. I know of no way that rates can be frozen where they presently are, or where rates can be affected other than by having units that are in a position to earn a substantial or a fair return on their investment.

Q. In your statement which you read, did you state the total capitalization of the Consolidated companies would be less or more than the present individual capitalization of the companies?

A. I didn't state, but I heard Mr. Horton's testimony, and his testimony is correct.

Q. That the new capitalization would be less?

A. Yes.

Mr. Fagg. Thank you.

159 EXAM. BAKER. Mr. Seymour, in that respect are you positive you are correct? As I understand, Mr. Fagg, by "Total Capitalization of the present companies," you refer to their capital stock outstanding; is that correct?

Mr. Fagg. I would call capitalization whatever form that the new owners would consider as capital in relationship to a basis for the determination of return upon investment under the provisions of the Act.

The WITNESS. I understand Mr. Fagg's question to mean whether or not the—whether or not the company was being blown up or whether the stock was being watered or whatever the common phrase is. Is that what you mean?

Mr. Fagg. That was it, in relationship to what the shippers have to pay under the Act; and what we are concerned about is really inflation from the present position of the eight separate companies to one consolidated company, and as I understand it, Mr. Examiner, the answers from both Mr. Seymour and Mr. Horton were that that was not being increased, and from the position of shippers, that is exactly what we want, is that no inflation—

Exam. BAKER. You had reference to capital assets used in the business rather than to securities outstanding; is that correct?

Mr. Fagg. That is right, the same as the Commission recognized in establishing rates that the shippers have to pay.

160 Mr. COCHRAN. May I just ask one question there?

Mr. Seymour, isn't it a fact that the preferred issue, plus the contemplated common-stock issue, the total amount of that in dollars, will be less than the net tangible assets of the companies?

The WITNESS. Well, on a very quick calculation, I would say that it would be about two to three hundred thousand dollars less.

Mr. COCHRAN. That answers the question, I think, Mr. Fagg.

Exam. BAKER. Any further cross-examination?

Mr. WIPRUD. May I inquire, Mr. Examiner?

By Mr. WIPRUD:

Q. I believe you testified, Mr. Seymour, that the Transport Company has stock in Associated Transport?

A. Yes.

Q. Has it any other relation or is there any other relation between Transport and Associated Transport other than as a stockholder?

A. None at all.

Q. Who owns the Arrow Transportation Company at the present time?

A. Well, the Transport Company has an option which was executed with the stockholders of Arrow; oh, I think, some time last September or October, at which time the Transport Company paid to the stockholders of Arrow a hundred thousand dollars against

a total purchase price of about \$1,100,000. During this last  
161 spring the Transport Company then purchased all of the outstanding preferred of Arrow for about—I think it was \$107,000. Not all of it. There remained, I think, some thirty or thirty-five thousand of preferred that was not included, so Transport has the hundred thousand dollars outstanding on the option, I think it is, about \$107,000 they have invested in preferred.

Q. Who are the stockholders of the Transport Company now?

A. Kuhn, Loeb.

Q. Did they advance the \$100,000 for this option?

A. They did, yes; that is correct.

Q. So, to the extent they have this investment, the exchange of stock between Arrow, the stockholders of Arrow and the stock—and the Associated Transport would accrue, of course, to that banking-house?

A. That is correct.

Q. I notice in Exhibit—if you will refer to Exhibit A-1-D, in Docket No. 1613—that the Phoenix Securities Corporation is a stockholder in Associated Transport.

A. Yes.

Q. To the extent of 2,271 shares?

A. That represents about a 35 percent stock interest which they have owned for, I think, eight or nine years in Consolidated.

Q. In Consolidated?

162 A. Yes.

Q. I see.

Did you hear the testimony of Mr. Horton in regard to the Brown Manufacturing Company, and the relationship between that company and the Horton Transportation Lines, Inc.?

A. Yes, I did.

Q. Can you state whether at this time it is the purpose of Associated Transport to continue that kind of relationship between the Brown Company and—or similar relationship, rather—between the Brown Company and Associated Transport?

A. I think perhaps I will have to answer your question by putting the wagon before the horse. The Brown Manufacturing Company has been included, or the negotiations to include it were carried on for, first, a practical reason. One was that we couldn't include the Horton Motor Freight Line unless we included the Brown Equipment Company, and, secondly, there was a very serious question in our minds whether we would want to do it even if we did not have to do it, even so far as Mr. Horton is concerned. I think I have made a more careful study of the activities of the Brown Equipment Company, or at least a more recent one, than Mr. Horton has. I know the Brown Equipment has made an endeavor over the past two or three years to become engaged in the general—in the sale generally of their trailers and their tractors and their other automobile accessories which they make. I

163 also wanted to find out, for reasons of our own, whether or not—whether or not the purchase of equipment by Horton from the Brown Equipment Company wasn't something that we ought to look into pretty carefully so far as auditing was concerned, but I did find that over a period of several years that the Horton Company has always bought the equipment at the identical price that the equipment has been sold to others. I find that very religiously every time that the Horton Company was to buy equipment, whether it be tractors or trailers, that they advertised for bids, and I have seen—the auditors have brought to me—advertisements they have run in the Detroit papers and San Francisco papers and wherever might be the center of people engaged in that business.



Answering your question specifically as to what may be their intention, I don't know. Perhaps I shouldn't say this because there may be some—there may be some truck manufacturers or some trailer manufacturers here. I am not altogether sure that if perhaps an offer commensurate with what we think is the value of the Brown Equipment Company is made we might accept, but it hasn't been a matter that has received complete attention, I think principally because this kind of an application is so difficult to conclude that it took about all the time we could get together.

Q. In your studies of the Brown Company, what would you say that the volume of business, annual business, would be, 164 approximately?

A. I think, to get an accurate picture, you would almost have to break it down by the activities which they are engaged in: You would have to break it down as to parts and then you would have to break it down as to the specialties that they manufactured.

Q. Just in general, Mr. Seymour, would you say that the figure of \$850,000 would be approximately the total?

A. Oh, yes, I think that is it—that is substantially their volume—that is true.

Q. And the major portion of that would be sales to the Horton Transportation Lines, Inc.?

A. I think that—I think that Horton has bought a major part of Brown's trailers and tractors, and I think that the percentage goes down in so far as parts and the like, and things of that kind that they manufacture.

Q. Referring to the United Sales, a subsidiary of Consolidated Motor Lines, are you acquainted with their business?

A. Yes, that is strictly a—strictly a purchasing company.

Q. I see.

A. Owned a hundred percent by themselves.

Q. I see. And they in turn sell and purchase—or accessories to these—

A. Yes.

Q. What would you say in round figures the volume of 165 business would be there?

A. I wouldn't have that exactly. I can get the figures for you.

Mr. JOSELOFF. We will have a witness to give that to you.

Mr. WIPRUD. Oh, all right.

Just one other question, Mr. Seymour.

Mr. WITNESS. I might—I might inject this at that point: I am sure that, in so far as the Associated Transport is concerned, that if the application be approved by the Commission that its

business will be conducted on a very simple basis where it will be engaged in rendering a common carrier service and where the company will buy that which it has to have.

By Mr. WIPRUD:

Q. In other words, the Associated Company would be a common carrier solely?

A. That would—I think that would certainly be their goal. You can't—in getting together several companies, you can't—they don't all come in just the way you hope that they would.

Q. But, so far as your present plans are concerned, Associated would be an operating company solely?

A. Oh, yes.

Q. Just one further question, Mr. Seymour: I think in your statement you stated that you had assurances from leading bankers as to certain financing. Could you elaborate on that a little bit?

A. That goes back—many of my conversations, or the beginning of the conversations go back to last year. There certainly is no reason for—reason for not saying who they are, for that matter.

Q. Will you state that for the record?

A. Yes. I have had many meetings with the president of the Guaranty Trust Company, with the Manufacturers Trust Company, and commercial bankers have become much more anxious to do this type of banking than they have been heretofore. Up until a few years ago they made no effort to take any of the business which is going to motor manufacturers' finance companies.

Q. You are referring now to equipment financing; are you?

A. Oh, yes. Yes, that is what I had particularly in mind. And, as Mr. Arbour can tell you, I think it is a matter of public record that the Consolidated have a very advantageous arrangement with a large bank within the last few months which solved their financial problems quite considerably.

Q. You are not referring now in your discussion to the underwriting of preferred stock?

A. No. No; I am talking about money that costs him much less than he had paid for it heretofore, in amount that made it possible for him to clean his picture up and at the same time to amortize it over several more years than he had been accustomed to doing heretofore.

Mr. WIPRUD. That is all I have, Mr. Examiner.

167 EXAM. BAKER. Any further cross-examination?

Mr. JOSELOFF. I would like to ask Mr. Seymour one question.

By Mr. JOSELOFF:

Q. With regard to your testimony on United States, you know, do you not, that this company, subsidiary of Consolidated, sells to the public as well as to Consolidated?

A. No, I didn't know that.

By Mr. SHIELDS:

Q. Mr. Seymour, what position do you hold with Transport, Inc. at this time?

A. I have no connection with Transport at all.

Q. None whatever?

A. None whatever.

Q. As president of the principal applicant here, could you say what percentage of the preferred stock and common stock, when issued, will be held by the Transport, Inc., as owner of Arrow carrier?

A. Oh, I would think it would be something between 6½ and 8½.

Q. How will that compare with the amount of preferred and common stock as may be held by the Horton Motor Lines?

A. That would be—that would be about 20.25 percent of Mr. Horton's—

Q. Horton Motor Lines will hold about 25 percent?

A. No; the Horton Motor Lines' percentage of the common stock, I think, is—I don't know what the audits may disclose.

They haven't been typed yet. I would think that Mr. Horton's interest in Associated Transport would be about 35 percent.

Q. As compared with 6 percent that will be held by Transport, Inc.?

A. Yes.

Q. The only voting stock will be the common stock?

A. No; both the common and preferred are voting stock.

Q. Well, the common stock will be held by all of these companies somewhat in the same relation as the preferred stock?

A. No, no; there is—the ownership is—I mean the present holdings by stockholders of the operating companies varies greatly.

Q. I understood from the explanations that had been made that preferred stock would represent about 80 percent of the tangible assets, and will be taken over.

A. It will be exactly 80 percent.

Q. And it will be distributed to the various companies in proportion to the tangible assets that are turned in?

A. It will be distributed to the stockholders of the presently operating companies.

Q. Well, will the common stock be distributed somewhat in the same manner?

A. Yes; in proportion to the number of companies that they have that are coming in.

Exam. BAKER. To clarify that question, isn't it true, 169 Mr. Seymour, that the common stock is distributed in proportion to the earnings of these various companies?

The WITNESS. That is correct.

By Mr. SHIELDS:

Q. Then your answer to me is corrected to that extent, that your common stock will be issued in proportion to the earnings of the company and the preferred stock in proportion to the net assets?

A. Yes; but both the preferred and the common stock will finally reach the present stockholders of the underlying companies in the same proportion that they now hold stock in the operating companies or the selling companies.

Q. Well, going further, assuming that is correct, I just stated that the—or asked you if the common stock is to be issued on the basis of the earnings and the preferred stock on the basis of tangible, net tangible assets?

A. That is correct, yes.

Mr. SHIELDS. All right. That is all.

By Mr. SULLIVAN:

Q. You don't own any stock of the Transport Company?

A. No.

Exam. BAKER. Any further cross-examination?

Mr. WIPRUD. May I inquire of counsel, does the record show who owns the stock of Transport Company now?

Mr. SULLIVAN. Mr. Seymour said Kuhn, Loeb did.

Exam. BAKER. Mr. Seymour answered your question a while ago, didn't you?

170 The WITNESS. Yes.

Exam. BAKER. Didn't you state that Kuhn, Loeb—

Mr. WIPRUD. Owns all of the stock.

The WITNESS. Yes; they own every share of stock, so far as I know.

Exam. BAKER. Any other cross-examination?

Before—in view of the lateness of the hour, I will reserve my questioning of Mr. Seymour until tomorrow. You will be present tomorrow, Mr. Seymour?

The WITNESS. Yes. Yes.

We will adjourn until 9:30 a. m. tomorrow morning.

(Whereupon, at 4:50 o'clock p. m., August 18, 1941, the hearing was adjourned.)

171 Before the Interstate Commerce Commission

Docket No. MC-F-1612

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION, ET AL.

Docket No. MC-F-1613

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B," I. C. C. BUILDING,  
WASHINGTON, D. C.,  
*Tuesday, August 19, 1941.*

Met, pursuant to adjournment, at 9:30 a. m.

Before VERNON V. BAKER, Examiner.

Additional appearance: Thomas P. O'Brien, General Organizer,  
International Brotherhood of Teamsters, Chauffeurs, Warehouse-  
men & Helpers of America, 815 Fifteenth Street, NW., Wash-  
ington, D. C.

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## PROCEEDINGS

Exam. BAKER. Come to order, please.

Are you ready, Mr. Cochran?

Mr. Cochran. Ready.

B. M. SEYMOUR, resumed the stand and testified further as follows:

Mr. COCHRAN. Mr. Seymour was being cross-examined at the close of the testimony.

Exam. BAKER. I thought his examination was completed, but I have a few questions that I want to ask him.

Mr. COCHRAN. That is what I thought.

Exam. BAKER. Before we proceed with Mr. Seymour, have you any idea as to when Mr. Reicher will be ready to testify?

Mr. COCHRAN. I am sorry, but Mr. Reicher is not ready to come yet, but he will be here tonight.

Mr. SULLIVAN. Do you mean when he will be available to give his testimony?

Exam. BAKER. Yes.

Mr. SULLIVAN. Monday morning.

Mr. COCHRAN. I did not know about that.

The WITNESS. I understand that is correct—Monday morning.

Mr. SULLIVAN. The delay is caused by the fact that there is a physical mechanical task involved in the printing of his docu-



ments, which will make it impossible for him to have them  
174 in shape before that. They will have to be proofread, and  
so forth.

Exam. BAKER. Very well.

Mr. Seymour, yesterday you mentioned that you were interested  
in the Metropolitan Securities Holding Company. I do not know  
whether you stated the extent of your interest in that company  
or not.

The WITNESS. I own about 30 percent of the stock of Metro-  
politan Securities.

Exam. BAKER. You do not control that company?

The WITNESS. No.

Exam. BAKER. Does any other single stockholder hold a ma-  
jority of the stock in that company?

The WITNESS. No; no, it is about 80 percent—I am talking  
now of the Metropolitan Securities Holding Company, which, in  
turn, owns only half of the stock of Metropolitan Distributors,  
which is a truck leasing company.

Exam. BAKER. Yes.

The WITNESS. About 80 percent of Metropolitan Securities is  
owned by the Greenebaum family, Mr. Yagle, and myself.

Exam. BAKER. How much does the Greenebaum family own;  
do you know?

The WITNESS. Of Metropolitan Securities?

Exam. BAKER. Yes.

175 The WITNESS. Oh, I would think somewhere in the neigh-  
borhood of 27 or 28 percent, and then they own all of the  
50 percent in Metropolitan Distributors.

Exam. BAKER. In connection with the proposed transaction last  
year of the Transport Company, in attempting to acquire control  
of a number of truck leasing companies, do you know whether or  
not any of those transactions were consummated?

The WITNESS. They were not.

Exam. BAKER. Do you hold any office at the present time in the  
Metropolitan Distributors, the trucking company?

The WITNESS. I am a director.

Exam. BAKER. Do you propose to continue in that office?

The WITNESS. Well, it would not make much difference  
whether I did or not. I do not believe I have been to a directors'  
meeting now for about 15 to 18 months.

Exam. BAKER. How many members are there on the board of  
directors of that company?

The WITNESS. Five.

Exam. BAKER. Would there be any possibility of Metropolitan  
Distributors being managed, in cooperation with and in coordina-  
tion with the operations of Associated Transport Company?

The WITNESS. Oh, very definitely, no. Metropolitan Distributors is very much managed by Leon Greenebaum.

Exam. BAKER. I asked Mr. Horton this question, and I would like to get your reaction as president of the applicant.  
176 What is your present plan, if you have any, with respect to consolidation into the applicant of the noncarrier companies of which you acquire control?

The WITNESS. If it could be done, and if it be the right thing to do, I would imagine it would be advisable if the Brown Equipment Company remained a subsidiary of the Associated Transport Company. On the other hand, there is a rather serious question in my mind as to whether the Associated Transport may not well decide to sell the property. I do not completely agree with Mr. Horton that it has the value that he attaches to it, because much of its activities and what it may contribute from the standpoint of traffic or volume of business, I do not know, but it is engaged in the rebuilding of motors of the Horton Motor Lines. That represents a substantial part of its activities, and certainly, insofar as Associated Transport is concerned, we would not carry on a unit rebuilding program located at Charlotte, because that is the extreme end of the territory that Associated Transport would serve. The unit rebuilding activity would certainly be more in the center of the territory. It would not be at one end of it. I am not altogether sure that a company of the size of Associated Transport, or a company of the size of the eight companies included in this application, could very well make it possible to have vehicles built

to its specifications and at a price certainly competitive with  
177 the price that Brown sells its equipment for, because Mr. Horton, or the Brown Equipment Company, goes very far in overbuilding their tractors, and their frames are heavier than the standard tractor, and the rear axles are about six times the normal size of a rear axle that can customarily be bought. I am not quite sure that they should go quite that far.

Exam. BAKER. Have you given any consideration in that respect to the United Sales Company, a subsidiary of Consolidated Motor Lines?

The WITNESS. My view as to the United, and likewise as to the Conger Realty Company, and the terminal owning company of McCarthy, is that Associated Transport could probably get along very well without any of them.

Exam. BAKER. By merging their properties into Associated Transport?

The WITNESS. Yes. Well, in the case of Conger and the Southern New England, their activities are limited strictly to the owning and the financing of terminals which are used in their business.

I can realize that they have performed a helpful service in so far as the present owners are concerned, but I do not recognize the same need in so far as the Associated Transport is concerned.

**Exam. BAKER.** Application No. 1612 states that authority is sought, first, to acquire control of the eight carriers, and, second, if control is acquired subsequently to consolidating the aforesaid companies with applicant, it was not intended that that second clause include the non-carrier companies; was it?

**The WITNESS.** No. That had specific reference to the carrier companies.

**Exam. BAKER.** Applicant, in case this transaction is approved, does not propose to engage in any contract carrier operations at all, does it?

**The WITNESS.** None at all.

**Exam. BAKER.** Have you given any consideration to the method which would be used in marketing the securities which are proposed to be sold to the public?

**The WITNESS.** No; never have gotten beyond the belief, which is the belief shared by all of the interested people, that there should not be any difficulty experienced in selling preferred stock—a preferred convertible stock, paying 6 percent, where the earnings are presently at the level that they are at, with the trend of business and the record that all of the individual companies have.

**Exam. BAKER.** Do you believe that marketing the security through competitive bids would be practicable?

**The WITNESS.** I can assure you, Mr. Examiner, that they will certainly market them through competitive bids.

**Mr. SULLIVAN.** I wish you would explain your question a little.

**Mr. Examiner.** I think you are using that in a rather technical sense, are you not?

**Exam. BAKER.** What I had in mind is, instead of making a private agreement, that is, making an agreement through private negotiations with an underwriter, you would solicit bids from various underwriters.

**The WITNESS.** That is what I understood.

**Exam. BAKER.** For the purchase of the entire issue of securities.

**Mr. SULLIVAN.** In a rather formal manner, you have in mind, rather than by informally trading with several underwriters and then agreeing with the one that, for various reasons, was felt to be best suited? You are thinking rather of a more formal method of doing it; are you not?

**Exam. BAKER.** Yes; that was my questions.

**Mr. SULLIVAN.** Yes; I do not think Mr. Seymour understood his answer was directed to that, to the idea that he generally did con-

tact a number of underwriters and to make the best deal possible.

Mr. Seymour. That is what I thought you meant.

Exam. BAKER. Well, you did not have in mind, then, the formal solicitation of bids.

The WITNESS. Well, I had never really considered very seriously the detailed procedure that we might follow, other than that I was sure that preferred stock, as I have described it, in a company of this kind—that I did certainly think that we would have more than one or two opportunities to market the stock. I am sure that there are going to be several of them, and, obviously, we would not know where we could make the best arrangement.

Exam. BAKER. The preferred stock will be sold at not less than par, so far as applicant is concerned; is that correct?

The WITNESS. Well, it would certainly be our goal. I don't know—as a matter of fact, I am not enough of a student of financing in that way to know, and I do not know whether there would be any discount or not.

Mr. SULLIVAN. The laws of Delaware make it impossible, according to our understanding.

Mr. HORTON. This is a Delaware corporation.

Exam. BAKER. That is correct.

Mr. SULLIVAN. Mr. Examiner, it is contemplated, of course, that in any event, before any underwriting agreement was signed, it would be submitted to the Commission.

Exam. BAKER. Yes, the application does—

Mr. SULLIVAN. It so states. I thought, perhaps, it had been overlooked.

Exam. BAKER. Mr. Seymour, last year you described in detail your plans in connection with the establishment of a system of preventive maintenance of equipment. Do you have similar plans in connection with the present applicant, Associated Transport, Inc.?

181 The WITNESS. Yes; we have. The only difference between last year and this one is that, I think, we have perfected our plans even beyond the point that we had reached last year.

Exam. BAKER. I was going to ask you if you would state for the record the advantages from the establishment of such a system, as demonstrated by your experience with other companies, and the economies which could be anticipated would result from such a system.

The WITNESS. There is some question as to whether we would finally establish two or three central repair shops. The number of units to be maintained could be two, well designed and centrally

located repair shops. It may, however, be found necessary, if the application be approved, to establish three central repair shops, to cut down the distances that the equipment would otherwise have to be transported. The greatest difficulty that we now find ourselves confronted with is the great variety of equipment, as to make and as to model. That makes it extremely difficult to install and the most effective form of maintenance. We have given consideration to a plan which contemplated the transfer of equipment from one present company to another company, or, perhaps, to two companies, with the hope that in that way we might assemble all of the Mack trucks and all of the Autocar trucks, whatever the case might be, because it is much easier to handle inspection, particularly if we have the uniformity of equipment.

182 There is great difficulty, from the standpoint of keeping an adequate supply of repair parts if we have to keep a stock for eight or ten different makes of vehicles. That which is going to be most important and most urgent is the installation of a new repair division, which would be located, probably, in one central repair shop. By that, I mean that when a motor unit fails it will be brought into the nearest garage, and whether the failure be something attached to the engine in the form of the carburetor or starter or generator, or whether it may be a transmission or clutch or a rear axle, it would immediately be dropped and the unit would be delivered to the stock room and another one would be given in its place.

So far as the operating department is concerned, it would make no difference whether it is a new one just brought from the manufacturer, or whether it is a rebuilt one. One would be as good as the other, from the standpoint of operation, and unit which failed would then be taken to the unit rebuilding department, where it would be completely overhauled. The difference between the unit rebuilding and the common practice is that a shop mechanic, where there is a unit failure, drops the unit, with the result that the tractor may very well be in the garage for a period of time. I know of instances where power units have been in garages as long as two or three weeks because of the inability to secure the complete unit,

or because a cluster of gears could not be purchased or they could not get the right carrier, whatever the case may be.

183 Under a unit rebuilding set-up those things could not be happen, and it becomes very essential presently, because I was reading only the other day of the likelihood that there is going to be a 100 percent priority on parts. I know from experience that the number of new parts that you have to buy, where you have a well organized unit building department, is—well, I know that it does not exceed 10 or 15 percent of the parts that must be pur-



chased, if it is done on the basis that it is done on in so many companies.

**Exam. BAKER.** Would not your system also contemplate certain periodical inspections and work on equipment prior to the actual failure of the parts?

**The WITNESS.** That is correct, and the change of units could very well occur at the time of the inspection periods, as well as being replaced when the failures occur. Preventive maintenance would occur, depending upon the nature of the business, the length of the haul, and the miles that was put on the equipment.. It may very well be done every two months in some operations, and perhaps earlier periods in others. Of course, under the Associated Transport proposed set-up, you would produce a much more even mileage distribution than is presently the case with the companies as they are individually operated now.

**Exam. BAKER.** Has your experience with the terminal 184 system demonstrated that great savings can be accomplished through such a system of preventive maintenance?

**The WITNESS.** In 1936, the Terminal Company purchased some 550 Chevrolet taxicabs, and during the first year that those vehicles were in operation our maintenance cost was about 1.1 cent a mile. Our maintenance was carried on then on the basis of looking after maintenance, so-called, when the vehicle would not run any more. We moved into a plan of preventive maintenance and unit rebuilding, and during the last year of the operation of these Chevrolet vehicles, our cost had been reduced to 6 mills, and had we not employed preventive maintenance and had we not had the unit rebuilding we never would have been able to have put 120,000 miles on the Chevrolet taxicabs.

**Exam. BAKER.** Do you feel that such a system of preventive maintenance would increase safety and reduce the breakdowns on the highways?

**The WITNESS.** Mr. Examiner, any time that a piece of automotive equipment is in good condition, then, as a result of periodic inspection, the possibility of failure of brakes and the failure of steering, is greatly reduced, and certainly preventive maintenance will prevent or cut down to a great extent road failures, and all of those things are induced to improved safety on the highway.

**Exam. BAKER.** I think there has been considerable testimony 185 with respect to anticipated greater utilization of equipment available. Would that greater utilization of equipment also result in less fuel used per ton-mile, say?

**The WITNESS.** Well, there is no question that that will be so. I am sure that under the proposed set-up there are many things that

could be done from the standpoint of producing increased mileage. Perhaps I should put it this way: When we talk of the motor freight business, we are, to a very great extent, talking of a relatively new business. That is true in so far as the companies that are included in this application are concerned. It has only been the matter of the last four or five years that the companies have reached that point where their operations have become profitable, at least to the point where they could expand their business to keep up with the increasing volume of business, and I think, perhaps, it is safe to say that the motor-freight business only became a full-fledged business a few years ago—perhaps five or six years ago. I know that in Mr. Horton's case there was no Horton Motor Freight Line until about 9 years ago. I know that in the case of Consolidated, it was not so long ago that freight was carried with a horse and buggy, and it is understandable that the majority of the companies have not approached the problem of greatest utilization of equipment and the getting out of their equipment the maximum performance, which can only be  
186 done by using the most modern kinds of testing equipment.

So, certainly, in the case of Associated Transport, we can, as I stated yesterday, get under way some private proving grounds of our own, because if we do not do it—if the industry does not do it—certainly the motor truck manufacturers are not going to do it. They are concerned primarily in building a truck which will take care of average requirements. There is not any vehicle that is designed and built for the motor freight business. They cannot afford to do that; at least so they are, and if we are going to have a vehicle that meets the requirements of this business a hundred percent, whether it be a trailer or a tractor, we are going to have to do most of the job. It has been because of that that Mr. Horton has moved into the building of the Brown tractor. As I stated before, Mr. Horton has gone, perhaps, to the other end. He apparently has a tractor that, at least from the size of the frame on the units that he uses, one would wonder whether it would ever wear out.

Exam. BAKER. Yesterday you stated that through movement of freight would be expedited by from 12 to 36 hours. Would you state some specific instances as to how such savings in time would be accomplished?

The WITNESS. Almost entirely due to the delays which occur in the transfer of freight from one carrier to another, going from New England down to the Deep South. It altogether  
187 depends on the number of transfers. If the freight originates with McCarthy Motor Freight Line, it then must be transferred to a company preferably going as far south as he can hook into, which may be Philadelphia, or which may be Baltimore.

If it is then transferred either at Baltimore or Richmond, it may as well be transferred to the third carrier, and on the basis of the schedules that we have now set up on two transfers, you could not fail to lose a minimum of 24 hours. Of course, that is serious likewise from the standpoint of cost of freight handling and the damage that results from it. If a carload of freight originates in New England, according to this plan, it arrives right at its destination in the trailer that it starts in. That is simple. We are talking now of a set-up that does nothing more than duplicate the kind of service that is available east and west to shippers of the Atlantic Seaboard, as far west as Chicago and on up into Indianapolis and down to St. Louis. There are many of them. There is the U. S. Freight Line. I think their volume runs somewhere around eighteen or twenty million dollars, and they show very substantial earnings, I am sure.

Exam. BAKER. You mean United States Freight Lines, motor carrier?

The WITNESS. I mean the U. S. Truck Lines of Ohio. The Transamerica has its home office in Detroit. Interstate does the same. Keeshin Freight Lines do the same. Associated 188. Transport is hopeful that it will make possible a service up and down the Atlantic Seaboard comparable to that service now available to shippers east and west.

Exam. BAKER. Speaking of the Keeshin Freight Lines, I think it is recognized generally that in recent years, at least, its profit has not been very high. Have you made any investigation to distinguish the proposed company from the Keeshin, as to the chances for successful operation?

The WITNESS. I can answer that question, Mr. Examiner, by saying, first, I am not acquainted with the comparable showing of all of the carriers, which I think the Commission classifies on the basis of a million a year in volume, and over. On a list that I looked at in 1939 there were 48 or 49 carriers that did a million a year, and over, and some two or three did a volume in excess of the Keeshin Company; perhaps two. I know Interstate did, and the only company that did not show an average profit of either 3 or 4 percent, and in excess of that, was the Keeshin Company; so that it cannot be that a company of that size cannot make money.

Answering your question more specifically, there is no comparison between what is here proposed and what was the set-up of the Keeshin Company. It is a fact that prior to the passage of the Motor Carrier Act the Keeshin Company merged several smaller operations, excluding the Seaboard, and as far as I know— 189 and I am quite sure that I am right—there was no effort made to retain the management which had built up these proper-

ties with the result that within a short time all that was retained were the rights that were acquired with the properties; and in the case of the Seaboard, more as an outsider than anything else, I think the difficulty there, perhaps, to a great extent, was due to the many changes of management that ensued over a period of time.

I do not think there is any more comparison between the Keeshin set-up and what we propose here than there is between nighttime and daytime.

Exam. BAKER. You feel that in this particular case you are purchasing a going business, with a large volume of freight, and that is the one distinction that you would make between the Keeshin acquisition—

The WITNESS. That is one, and the other one, Mr. Examiner, is that if I had any number of millions of dollars and I wanted to invest it, I would not pay for these properties 25 cents on the dollar as against the net worth for their properties, unless they were going to go along with the business. The business of this kind is highly personalized, as this is not a one-man business.

Mr. SULLIVAN. May I suggest a question to him at this time, Mr. Examiner?

Exam. BAKER. Yes.

Mr. SEYMOUR. I would like to ask you, Mr. Seymour  
190 if in putting this together one of the considerations that the operators themselves gave to bringing you into picture, along with themselves, was to have a man familiar, in general, with the business, and a man who was not identified with any particular line, so as to act as a leavening factor between the heads of the various businesses, to be sure that no one man's ideas prevail over all the rest of the ideas of the operators in respect to how the businesses should be run?

The WITNESS. Well, I can very well understand that it may occur to many people to ask the question why a man who has not grown up in the motor freight business has been asked to head up the consolidation of several important companies serving the Atlantic Seaboard. The reason is very simply stated, that it is not any different insofar as these properties are concerned than it would be in the case of any similar number in any other industry. It is next to impossible, I imagine, to assume that out of a great of any number of companies the men in it can agree upon any one single man to head up their own properties. That is because this business has been highly competitive. It is a business which, by its very nature, is complex and all of that, and it has produced over a period of time very substantial clashes of personalities. I have spent over the past two years almost all of my time with men in this business, and they

191 felt that, in the first instance, there would have to be a man from the outside to put this kind of a transaction together and I might describe my official function by saying that, at least in the early days, I was a sort of an official referee. Does that answer you?

Mr. SULLIVAN. Generally; but what I had in mind was that one of the functions which I deemed you would serve in this picture was to see that whatever course of conduct or policy was followed by the group in the future was one that had been well weighed, and because one man might have a stronger personality and another man a larger interest it still was not going to be a one-man company, such, perhaps, as the company that the Examiner was speaking of before.

The WITNESS. It has been my hope, and I am sure the hope of the other gentlemen, that because I have not been so close to the business as they have been, I will still be able to see the trees because I have not been so close to the woods.

Mr. SULLIVAN. That is my point.

The WITNESS. Yes.

Exam. BAKER. Speaking of through movements of freight, the proposed operation will extend all the way to New Orleans. Do you feel that it would be practicable for a trucking company to move truckload freight the distance involved between New Orleans and points on the East Coast served by these companies?

The WITNESS. Do you mean from Georgia southwest?

Exam. BAKER. I mean from New Orleans, say, up to 192 New York or Baltimore.

The WITNESS. Well, under normal conditions, I think there may very well be a question. There is a terrific divergence of opinion in the motor freight business. Some subscribe to the school of thought that the motor freight business is pretty much a shorthaul business. There are others who have effectively disproved the theory. I do not know, Mr. Examiner, what time may prove. Personally, there is some question in my mind whether freight can be profitably and satisfactorily moved a distance of that kind, yet we do know that, insofar as east-and-west carriers are concerned, a terrific volume of freight is being moved those long distances, perhaps not quite the distance from New York to New Orleans, but three-fourths of that distance.

Mr. JOSELOFF. Well, is it not true, Mr. Seymour, that the terrain from New York to New Orleans along the Atlantic Seaboard is comparatively level terrain?

The WITNESS. Oh, yes.

Mr. JOSELOFF. And that would accommodate itself to long transportation movements?



The WITNESS. I certainly think it is easier than going over the Alleghany Mountains.

Mr. JOSELOFF. And these east-and-west movements that you referred to are being run, and profitably so, through much more difficult operating territory than the territory in the instant application.

The WITNESS. That is true.

Mr. JOSELOFF. And is it not a fact, so far as you know, that transportation out on the West Coast involves very long distances through mountainous territory, as well as transportation in the Rockies, and those movements have been conducted successfully for years?

The WITNESS. Yes; motor freight goes every way.

Exam. BAKER. Mr. Seymour, referring to your statement yesterday with respect to anticipated economies in connection with insurance and safety experience, I believe you explained that sufficiently.

The WITNESS. Excepting only that in a conference with the officials of one of the largest companies in the United States the estimate made at this time was rather substantially increased on the basis of the figures that were discussed, and on the basis of the volume up to April 30, 1941, and applying the terms of a proposal made as recently as last week, that figure would move up to \$390,000.

Exam. BAKER. You estimated that in connection with a sales effort there would be a saving of \$150,000 a year, or about 20 percent. How did you compute that \$150,000?

The WITNESS. First, on the general premise that there has to be a limit to the number of freight solicitors that there would be for a single company to prevent the situation where there would be a number of them calling on a shipper. That was the first basis upon which we proceeded, and we then tackled it on the basis of giving consideration to the number of solicitors presently employed and what, in the opinion of all, would be that number of solicitors which would give us complete and adequate coverage, yet short of a point where we would not just annoy shippers to death.

Exam. BAKER. That amount is made up primarily of savings in salaries of solicitors; is it?

The WITNESS. That is so, but I do not want it to be considered that that means that those men would lose their employment, because the number that would be involved there could be otherwise used.

Exam. BAKER. You estimated, under terminal expenses, as saving about \$250,000 during the next year. Have you any definite plans for consolidation or elimination of particular terminals?

The WITNESS. Yes, sir; I know that it is the intention of counsel to have that put in the record as the representatives of the other companies appear. It has been discussed with individual companies, and I know that some considerable thought has been given to it as between Mr. Altwater and Mr. Arbour and Mr. Barnwell and Mr. Horton, where more duplication exists than elsewhere.

Exam. BAKER. There will be evidence in support of those  
195 estimates?

The WITNESS. Yes; that is right. That figure is a very modest one. It is a matter of fact, the best opinion of all is that it would be twice that amount, and we just arbitrarily cut it in two.

Exam. BAKER. You anticipate a saving in administration and general expense of \$175,000 annually.

The WITNESS. That is right.

Exam. BAKER. How did you estimate that?

The WITNESS. As to the detail, I would have to, and I will be glad to, submit the working papers on that, because that represents a variety of items.

Exam. BAKER. Well, just generally the way in which the savings would be brought about.

The WITNESS. If I can take a look at the schedule of items under that account, it will probably help.

Mr. HORTON. Let him have the operating statement.

The WITNESS. Any break-down.

Mr. HORTON. The one showing the Interstate Commerce Commission break-down.

The WITNESS. We can submit that tomorrow or the next day.

Exam. BAKER. All right.

The WITNESS. There was one large item. Going north there is a private line to New York, up to several of the terminal  
196 points of Consolidated, and from New York south there is a tie line that goes from New York, from Mr. Horton's New York warehouse, to Baltimore and down to Charlotte, and it ties in to one or two of his other points.

The communication expense is a very, very large item in this business, and under the proposed consolidation Mr. Barnwell would be tied in to the costs and to the tie line presently in existence, and the tie line going north would be extended over to Buffalo. As a matter of fact, our studies have indicated to us that private lines, as a substitute for tolls, will save easily 35 to 40 percent of present communication costs. I have not the figures on the communication costs for last year, but it was some quarter of a million dollars.

The cost of printing stationery and items of that kind has been studied on the basis of placing a contract for the requirement of

all of the eight companies as against cost to be paid, and they represent quite a considerable amount.

Going on down through the items, of course, there presently exists some duplication of law expense. There is a very considerable amount of duplication of expense incident to regulation, and all of those things could be rather substantially reduced.

I think, for the purposes of the record, however, it may be  
197 more helpful if our conclusions as to these particular items broken down would be—

**Exam. BAKER.** I think your statement is sufficiently in detail.

**The WITNESS.** All right.

**Exam. BAKER.** You also stated that the cash on hand of the various carriers presently is adequate for one week's operation. How much cash do you think a carrier should have? Should it be more than that?

**The WITNESS.** Well, it is a sort of an odd way to determine the adequacy of cash in a business, to put it on the basis of the number of days, because it is a little hard to vision a situation where a company would come to a complete cessation of operation and would still continue to maintain its hundred percent overhead; but answering your question, I would certainly think that any business that did not have cash enough to maintain its going existence for a period of at least a month would not be what you could call in a very strong financial position. I think, perhaps, a better way to answer that question, Mr. Examiner, is to say that the ratio between current assets and current liabilities is presently about even—seven. I think the current assets exceed the current liabilities on the consolidated statement by about \$250,000, and in connection

with my testimony yesterday on the subject of working capital, I meant that a better ratio of current assets to current  
198 liabilities is going to be necessary to secure the cheap money which I mentioned. Bankers have not yet gotten to the point where they consider loans as good loans unless there is a reasonable ratio as between current assets, and current liabilities.

**Exam. BAKER.** Do you think a company of the size of the one here projected would be better able to withstand a recession in business if such recession occurred at the end of the present national emergency than are the various carriers independently?

**The WITNESS.** I think it is just about the difference of a strong man withstanding a hard punch on the nose and a weak one.

**Exam. BAKER.** Is a large company as able to reduce expenses, in case of a great reduction in business, as a small company is?

**The WITNESS.** I heard Mr. Horton's testimony yesterday, and he did say that he assumed that Associated Transport, if the application be approved, would not be quite as flexible as a very small

company. I agree that that is so, providing the company that he had in mind was small to the point where the man did business under his hat; but I do vision that in the set-up of the Associated Transport none of the flexibility that characterizes any one of the individual carriers is to be lost, and that is due primarily to the fact that on the board of directors, where matters of management policy are going to be determined, there will be no director, other than Mr. Arnold, representing the Transportation Company, who was not the proprietor of a business. The men who have built up each of the companies are going into this consolidation, and I fail to see why there can be any lost motion, and I believe also that the collective ability of nine men or ten men, such as I have described, equips a company better for the vicissitudes that may be ahead of us than any combination that I can think of or know of.

Exam. BAKER. Will there be details subsequently submitted as to the proposed use of the \$1,500,000 which would be raised by the sale of securities to the public?

The WITNESS. Yes.

Mr. SULLIVAN. There will be, sir, in connection with Mr. Horton's testimony.

The WITNESS. If the witness is permitted to make a suggestion, after Mr. Reicher has completed his pro forma balance sheet and the audits are completed—they are now completed but have not been gotten into final shape—and we have an opportunity to study them on that particular subject, I would like an opportunity to follow Mr. Reicher, in so far as the need for working capital is concerned. On the basis of the studies that we have made, I feel that a million and a half to serve the purposes that I have 200 endeavored to outlined, is absolutely the minimum that we must have to accomplish the things that we feel can be accomplished.

Exam. BAKER. Those are all of the questions that I have of the witness.

Mr. WIPRUD. Mr. Examiner, I have some questions.

Exam. BAKER. Very well.

Cross-examination (continued) by Mr. WIPRUD:

Q. Mr. Seymour, has the Metropolitan Securities Holding Corporation, of which I understand you are a director, any relationship with any banks or security houses; that is, through its financing or otherwise?

A. No, sir; the activities of the Metropolitan Securities Holding Company are to be the owner of 50 percent of the stock of the Metropolitan Distributors and all of the stock of General Truck

Sales and Service and a couple of smaller subsidiary companies, whose activities are operation.

Q. For the purpose of conserving time and to complete the record, Mr. Seymour, would it be convenient for you to submit a list of the stockholders of the various corporations with which you are connected and their subsidiaries?

A. Yes.

Q. And also their banking connections.

A. Yes. The companies that I am connected with have no banking connections other than the banks where we have funds deposited.

201 Q. You will submit them for the record?

A. Yes; I will be very glad to.

Mr. SULLIVAN. Excuse me a minute.

Yesterday he referred to the fact that he had a small holding in the Keeshin Lines. You would not want that included?

Mr. WIPRUD. No, no.

Mr. SULLIVAN. Only a few shares of preferred stock. You are thinking solely of those of which he is an officer, I take it?

Mr. WIPRUD. That is correct.

The WITNESS. Perhaps I did not understand the question. You want a list of the directors of the other companies of which I am a director, or do you want a list of the directors of all the companies—

Mr. SULLIVAN. Both.

Mr. WIPRUD. A list of the stockholders of corporations with which you are connected.

Mr. JOSELOFF. Those three corporations that were mentioned in Mr. Seymour's testimony, I assume—Metropolitan Securities, Metropolitan Distributors, and Truck Sales. I guess that is all you have in mind; is it not?

Mr. WIPRUD. That is correct. I understand those are the only companies he is connected with.

The WITNESS. I can tell you that right now.

Mr. WIPRUD. All right.

202 The WITNESS. In the Metropolitan—shall I give you the

Metropolitan set-up—the directors are Harry Yagle, Leon C. Greenebaum, and there are two directors who are employees of the company. The same directors are in the underlying companies; that is, the Metropolitan Distributors, which is a truck leasing company, and General Truck Sales and Service. In the Terminal System and its underlying operating companies, the stockholders and directors are myself, Daniel G. Arnstein, and employees of the company. The same is true of Yellow Products.

That is the whole story. I can confirm that, if you want me to.

Mr. WIPRUD. No; I just wanted the list.



By Mr. WIPRUD:

Q. Did you give a list of the stockholders of the Metropolitan? You gave the directors.

A. Well, the Metropolitan Distributors, which is a truck leasing company, is owned 50 percent by the Greenebaum family. I own in Metropolitan Distributors about 15 percent; Mr. Yagle owns about 20 percent, and the balance is owned by employees and miscellaneous people.

Q. None of these companies have done any financing?

A. None at all.

Q. Just one more question in regard to the Transportation Company.

Has the Transportation Company any outstanding commitments or contracts in connection with any truck carriers other than Arrow?

A. They have not.

Mr. JOSELOFF. I would like to clear up one point for the record, Mr. Examiner, with Mr. Seymour, if I may.

Exam. BAKER. Yes.

By Mr. JOSELOFF:

Q. Mr. Seymour, you testified that it is proposed that there be no contract carrier operations by Associated Transport, and I assume that you meant there would be no contract carriers in the general sense of the term, as it may be competitive with common carrier activities of the members. For example, in the McCarthy Freight System there is a small and highly specialized movement in the handling of precious metals and silver by means of special equipment. It is not your purpose, is it, to dispense with that operation, unless requested to do so by the Commission, because it is not competitive with the common carrier operations of the other members?

A. Well, I am now only reminded that I did know that there was a relatively small amount of that kind, but as against that I remember that, during negotiations, it was a matter of agreement that the contract activity of McCarthy was to be discontinued, in the event of approval.

Q. Well, Mr. McCarthy has another contract operation, which is competitive in its nature with common carrier operations, we will say, of Consolidated. That is the movement of telephone supplies and equipment, and that operation, I believe, was the operation that would be discontinued, but none of the member carriers in the Associated Transport have authority to handle precious metals and silver under a specialized contract operation, and it is not at all competitive, and I ask you whether,

under those circumstances, a policy has been formulated with regard to that movement.

A. I have not even an opinion on it, Mr. Joseloff, because I do not know anything about it.

Exam. BAKER. When you testified at the conclusion of the hearing yesterday, Mr. Seymour, I understood you to say that you would look into that feature and state definitely whether it is proposed to engage in this traffic.

The WITNESS. Yes, sir; I will.

Mr. SHIELDS. I did not get your question, Mr. Examiner—to state definitely what?

Exam. BAKER. As to whether or not applicant would engage in any contract operation.

Mr. SHIELDS. I did not have in mind any further cross-examination; Mr. Examiner, but on hearing the statements made relative to Keeshin, which seem to be somewhat material in this record, I would like to test Mr. Seymour's knowledge on the subject.

Exam. BAKER. Very well.

By Mr. SHIELDS:

205 Q. You stated, in comparing the proposal here, Mr. Seymour, with that of the Keeshin Company, that the Keeshin Company, in the progress of its development, had acquired other companies. Are you acquainted with the companies which it did acquire in years past?

A. You mean by name?

Q. Yes.

A. Not by name, but I am very certain that they did acquire small properties. I did know the names.

Q. Well, you know the Seaboard as being one, do you not?

A. That is right.

Q. And do you know whether or not they retained the management of the Seaboard Company?

A. For a short time.

Q. Do you know Mr. A. L. Mount, Jr.?

A. Yes.

Q. Do you know that he is still senior vice president of the company and in charge of it?

A. Yes.

Q. And also a director of the Keeshin Freight Lines.

A. And I know some of the management that was not retained.

Q. Mr. Mount was a full half partner, was he not?

A. I think he was a third partner. I understood that there were three Rhinelanders and Mount.

Q. Well, at least he was retained, was he not?

A. That is right.

206 Q. Are you acquainted with a company that was acquired by the name of Dickens Freight Line?

A. Not acquainted with it. You recall to my mind that that was one of them.

Q. Do you know whether Mr. Dickens was still retained as an employee by the management of the Keeshin Company?

A. No; I do not.

Q. Are you acquainted with the company known as Berne Trucks? Are you acquainted with that company?

A. No. As a matter of fact, I am not acquainted with any of the others that you have mentioned.

Q. You stated that the management was not retained, and I wanted to test your knowledge on that.

Do you know that Mr. Berne is still retained by the Keeshin Company in a sort of managerial capacity?

A. No. If I may answer your question this way, Mr. Shields, my knowledge on that particular subject comes from Mr. Keeshin and Mr. Arnstein during the time and after the properties had been acquired.

Q. You also compared the proposal here with what has been done in connection with the consolidation of the Keeshin operations, and you compared it with the Interstate System. Do you know how many pieces of equipment the Interstate owns and operates?

A. Very few.

Q. It is practically a leased operation, is it not?

207 A. That is correct.

Q. Do you know the extent of their social security taxes?

A. No; but I understand that they pay them, whatever they are.

Q. Do you know anything about the extent of them? That was my question.

A. Do you mean the extent—

Q. How much they were, the extent of them.

A. No; I only know they pay them. How much, I have no idea.

Q. You do not look upon the Keeshin system as an operation using leased equipment; do you?

A. No; I do not.

Q. You know nothing about the comparison between the social security taxes of the two companies—Keeshin and Interstate? You know nothing of that?

A. I know it is not a difference of three-quarters of a million dollars a year.

Q. That may be true, but you do not know what the difference is?

A. No; I do not.

Q. I do not know what the relation of three-quarters of a million dollars may be. Will you explain that?

A. That is about what Interstate earned—I mean from the whole picture—they earned in 12 months, ending, I should say, about the middle of last year.

Q. You are speaking of gross or net?

208 A. I am speaking of net. As a matter of fact, I have never had any interest in breaking it down. I know that there are companies in the Interstate set-up, other than the Interstate System, and they own other companies.

Q. Do you know whether or not Interstate maintains any garages for the repair of equipment?

A. As a matter of fact, I know they do not. I know they own and maintain terminals.

Q. That entails a great percentage of overhead cost with any motor carrier. Does it not, the maintenance of equipment?

A. Well, I think the answer, Mr. Shields, is that Interstate's arrangement cannot be totally unsound, or the people who own the trucks would not still be operating under that arrangement.

Q. Well, do you propose to conduct the operations in the set-up here with equipment that would be leased by the Associated Transport or owned by them?

A. They will be owned by the Associated Transport.

Q. And then, to that extent, there is no comparison; is there?

A. Well, I have to answer your question by saying that because I believe that equipment should be owned by the Associated Transport, or by any company, does not necessarily mean that Interstate is wrong, because I do not agree with them.

Q. Well, when all of these certificates are consolidated, if approved by the Commission, it will amount to a great deal of  
209 local service, will it not, in serving intermediate points between terminals?

A. That is correct.

Q. Do you know whether that is the type of service that is being rendered by Interstate?

A. No; I am not acquainted in detail with their service.

Q. Then, the success that you were referring to in connection with Interstate may not necessarily be comparable to the situation that you are proposing here?

A. I do not believe my testimony in that respect has been tendered as I think you think. What I meant to convey is that there is available to shippers east and west, as represented by the service represented by Interstate, and I do not know, as far as the shippers are concerned, whether they care whether Interstate owns them or whether somebody else owns them, if the service is good and the

rates are satisfactory and their relations are good. I mentioned the Keeshin Company, but there are many others that I mentioned. There is Trans-America, and there are many others that can be mentioned. I said that only that Transportation Co. would make available to shippers on the Atlantic Seaboard a service comparable in coverage to the service rendered by east and west companies.

Mr. JOSELOFF. You mean Associated Transport.

The WITNESS. Associated Transport.

By Mr. SHIELDS:

210 Q. Now the Examiner referred to the fact that the Keeshin Company had not had a profit during several years in the past.

Mr. SHIELDS. I wonder if the Examiner had in mind the Consolidated operations of all of the Keeshin Companies, or any one of the three operating companies.

Exam. BAKER. I had in mind the Keeshin system, but I do not believe I stated that they had earned no profit. I trust that counsel will not feel that I intended to reflect upon the Keeshin System at all.

Mr. SHIELDS. No, no, Mr. Examiner.

Exam. BAKER. It was merely from the standpoint of getting a comparison between large companies, that I mentioned the Keeshin Company.

Mr. SHIELDS. That is the only reason I wanted to get it clear in the record. There were certain operating divisions of the Keeshin Company that did make a profit, but the system as a whole has not, and those may be comparable to the proposal that is under consideration here. That was the purpose of my further cross-examination.

The WITNESS. As a matter of fact, Mr. Shields, in the interest of accuracy, I recall this very distinctly: In the comparisons that I made reference to, it was the Keeshin Company and not the Seaboard, because the Seaboard was not included. It was listed further down the line.

211 Exam. BAKER. If you desire to make any statement for the record on that, I will be glad to have you do it, Mr. Shields.

Mr. SHIELDS. No. That is all the questions I have.

Exam. BAKER. The witness is excused.

(Witness excused.)

Mr. COCHRAN. Mr. Horton, will you come to the stand, please.

Exam. BAKER. I think, before starting another witness, we might take a 10-minute recess.

Mr. COCHRAN. I think that is a good idea.



(There was a short recess taken.)

Exam. BAKER. Come to order, please.

Off the record, Mr. Reporter.

(Discussion off the record.)

Exam. BAKER. Back on the record.

Mr. O'BRIEN. Mr. Examiner, at this time I wish to enter an appearance for myself. My name is Thomas P. O'Brien. I am general organizer of the National Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, located here in Washington.

Exam. BAKER. Are you a registered practitioner?

Mr. O'BRIEN. I am not, sir.

Exam. BAKER. You are not a registered practitioner?

Mr. O'BRIEN. No; but I am directly representing our organization. I have appeared in all of these proceedings that have taken place heretofore.

212 Exam. BAKER. Are you an officer of the organization?

Mr. O'BRIEN. I am, sir.

Exam. BAKER. You will be permitted to participate.

Are there any other appearances?

I believe there was a gentleman here yesterday, representing the National Industrial Traffic League. Is he present at this time?

You may proceed, Mr. Cochran.

H. D. HORTON resumed the stand and testified further as follows:

Direct examination by Mr. COCHRAN:

Q. Mr. Horton, while on the witness stand yesterday you stated your position with the Horton Motor Lines and your business experience, and you made some comments as to the development of the Horton Motor Lines from their inception. You stated that you were the operator and sole proprietor for a number of years of Horton Motor Lines, and in addition to the comments you made yesterday—will you please not attempt to repeat, but go ahead and give any other information that you think should be furnished at this time in connection with Horton Motor Lines, its organization, its development, and its present status.

A. I am not sure that what I may say may not to some extent be a repetition of what I said yesterday, because what I did say yesterday was couched in fairly general terms.

213 Q. Mr. Horton, I think you are quite correct. I will ask some questions in detail concerning your operations.

Do you recall now how many terminals Horton Motor Lines has?

A. Nineteen, sir.

Q. Can you tell us where they are located?

A. Yes, sir.

Q. Will you do that, please?

A. In Rome, Ga., Atlanta—

Q. Before you go into that, I think that is set forth in Exhibit E, is it not, of your application?

A. I understand that it is; yes, sir.

Q. All right.

Did you file an application with the Interstate Commerce Commission under the grandfather clause for rights?

A. Yes, sir.

Q. Do you remember the docket number?

A. I will have to—

Q. Was it MC-73943?

A. Yes, sir.

Q. Has that application been passed upon and rights granted, or not?

A. I think, with a minor exception.

Q. Well, Mr. Lawson, who will come on the stand later, will be able to explain that.

214 A. Mr. Lawson will follow for our company, and he can give you more detailed information on that point.

Q. Will you state generally the territorial scope of those rights and the operations of Horton Motor Lines?

A. In general, it covers service for the Atlantic Seaboard territory, New York, Wilkes-Barre, and Pittsburgh in the East; and Rome, Ga., Atlanta, Ga., and Greenville, S. C., and Charlotte and Greensboro, N. C. and the territory immediately surrounding those points.

Q. In the operation of this company, what class of freight, or what classes of freight are transported?

A. General commodities, with the exception of explosives, valuable documents, et cetera—the usual exceptions.

Q. Can you state the number of pieces of equipment now in use by Horton Motor Lines?

A. 720.

Q. Will you separate those into the different units; when you say 720?

A. Well, there are 118 trucks, 285 tractors, 304 semi-trailers, and 13 service trucks.

Q. Is the preponderance of the traffic moving over your lines north or south, or is it more or less equalized?

A. It is fairly well equalized.

Q. In the handling of this traffic, are you now short of terminal facilities, or do you have ample facilities?

215 A. No; we are short of facilities. We are building facilities now in Washington and in Greenville, S. C., but our financial position does not indicate that it would be wise to build at other points where we have not terminals at the moment.

Q. If this application is approved, and as a result of such approval these companies be consolidated, have you any plan formulated that would indicate that there would be changes in the use of your present terminal facilities or those of the other carriers?

A. Yes. If I again gave it, having reference to our Shelby and Hickory warehouses, and to our warehouse in Charlotte, it would be a repetition of the testimony of yesterday; but I have gone into this quite thoroughly with Mr. Barnwell, and we have proposed to do that.

Q. Are there any other changes which you have in mind, or any other facilities which would be improved or done away with that you failed to mention yesterday?

A. I do not know of any that would be done away with. We have a good many improvements in mind. One is the expansion of our facilities in Baltimore, a service garage, and make that available for the Barnwell and Southeastern operations.

Q. Is it the fact that the present terminal facilities of the two or three competing lines in the southern section of the territory, the names of which appear in this application, if used in the  
216 manner in which they are used, or if there was a change in the use of the terminals, bring about a saving in operation?

A. Yes; there will be some savings in operation. The great benefit, however, would be the expediting of the movement of freight, less congestion and less delay.

Q. Generally speaking,—and I think you answered this question yesterday—if this application is approved, will there remain outside of the control of Associated Transport, Inc., common carriers offering service similar to that to Horton Motor Lines, Inc., throughout this territory?

A. Yes; a very considerable amount.

Q. You heard Mr. Seymour's statement, Mr. Horton, in reference to the time saved in the exchange of movement of freight resulting from the consolidation. Can you add anything to that statement, which would illustrate it or make it definite, within your knowledge?

A. I can support his statement as being wholly sound, from my own personal knowledge of the operation of our business. Multiple transfers of freight do produce a very considerable delay, and in the event that all of the transfers of freight are not made before the Sunday holiday starts up, which frequently result in delays for as much as three or four days, the average

delay during the middle of the week, I would say, would be from 12 to 24 hours.

Q. In the making of these transfers on freight moving  
217 from New England into the Deep South, how many hours  
of time could be saved, under your estimation, under certain circumstances?

A. Well, in any very large movement, the hours saved would be actually about 16 to 18 hours; but, in effect, it constitutes a 24-hour faster service, because shippers in the South, particularly, will not receive freight in the afternoon. That is the time they do their shipping, and unless the freight can arrive in their terminal, any pick-up and delivery in the forenoon usually has to be held over until the next day.

Q. Then, as a matter of fact, the time saved by the elimination of transfers would make it possible for you to bring the freight into these places ready for delivery in the early morning, thereby effectuating a saving in time of approximately 24 hours?

A. In many cases it will be 24 hours, and where a Sunday intervenes it will be 48 hours—a Sunday or a holiday.

Q. The saving of time in the delivery of freight is an essential feature resulting in a great benefit to the shipping public; is it?

A. It is. It is a benefit in two ways. It is a great benefit to the operator, himself, to the truck carrier, in that it gives him greater utilization of his equipment, but there is a tremendous benefit to the shipper as well. It is true today, and, in my opinion,

218 it is likely to be true for some time in the future, that  
manufacturers and merchants are not able to maintain complete inventories of merchandise and materials and parts, so that any movement of freight, any freight service that brings to them more quickly the materials and merchandise that they are out of certainly benefits them greatly. I know, from talking with shippers, that they make a very strong point of that. In many cases failure of materials to arrive at a manufacturing plant can cause a complete shut-down for 24 or 48 hours. We have had that happen. We have had manufacturers actually ask us to open up our warehouse to permit them to come and take freight out at 1 or 2 or 3 o'clock in the morning, so that they would not have to shut down their plant, but could keep it running continuously.

Q. Mr. Horton, have you a copy of the application before you?

A. Yes, sir.

Q. Will you turn, please to Exhibit A, Horton Motor Lines?

Mr. JOSELOFF. Here is my copy.

The WITNESS. Thank you.

By Mr. COCHRAN:

That exhibit shows the outstanding stock and the owners of stock of the Horton Motor Lines?

A. It does, sir.

Q. Exhibit B, Mr. Horton, I believe is a blank; is that correct?

A. Yes, sir.

Q. The figures set forth on Exhibit C indicate what?

A. It represents the rates of depreciation that have been  
219 charged by Horton Motor Lines for the years 1936 to 1940, inclusive.

Q. What is Exhibit C?

A. Exhibit C is the balance sheet statement of current assets of Horton Motor Lines, and continue on the second page the current liabilities and the capital structure of Horton Motor Lines.

Q. Exhibit D is a blank, I believe, Mr. Horton?

A. Exhibit D is a blank, sir.

Q. "See attached." That is my mistake. The first page we have—

A. You are correct. Exhibit D is continued.

Q. My mistake.

A. Into an operating statement.

Q. Income statement for the year ending April 30th.

A. Income statement.

Q. On Exhibit E we have the words "see attached." What is Exhibit E?

A. That is an exhibit showing the leases, monthly rental, and date of expiration of all of the terminals, warehouses, and offices of Horton Motor Lines in the prosecution of its business.

Q. I will ask you, Mr. Horton, if there should not be added to that Exhibit E the warehouse or terminal that you are operating at Cumberland, Md.?

220 A. Yes, sir; there should. My recollection of the matter is that we pay some amount, \$10 or \$15 a month, some very small amount. It is a lease.

Q. It is on a month-to-month basis?

A. On a month-to-month basis.

Q. When did you notice that that error was in this exhibit?

A. Last night.

Q. Will you explain Exhibit F, please?

A. Exhibit F is an exhibit indicating that there is an employment contract between Horton Motor Lines and S. W. Shelton of Richmond, Va., on the basis of \$5,400 per year, stipulating that a year's notice is necessary to cancel the contract in force. As I explained yesterday, Mr. Shelton is our public relations counsel, living in Virginia, but operating in North Carolina and South Carolina, Virginia, Maryland, and the District of Columbia.



Q. It is a fact, is it not, Mr. Horton, that he handles generally the legal work in that section for Horton Motor Lines?

A. He does.

Q. Exhibit G shows an insurance schedule in effect April 30, 1941; is that correct?

A. Yes, sir; several insurance schedules.

Q. What kind of insurance is referred to there?

A. That is all types of insurance we carry, both as required under Interstate Commerce Commission rules and regulations and additions thereto, and additional insurance that we carry for our own protection.

Q. I assume that everybody else here knows, but I do not. Will you give me the information? What do the letters "P. L. and P. D." mean?

A. Public liability and property damage. That is generally understood in the trade.

Q. This Exhibit G contains a list of the insurance policies covering the activities of Horton Motor Lines; is that correct?

A. Yes.

Q. Will you now turn to Exhibit H? Have you any explanation to make of that item indicating a claim?

A. It was a claim—

Q. Of Mrs. Stanford.

A. Listed against our company by Mrs. H. J. Stanford, which was closed out by the payment of \$150 by Central Motor Lines as the responsible party. There is no such claim in existence against us now.

Q. Do you recall the date of that payment?

A. I don't recall. It was very recently.

Q. As a matter of fact, it was August 16th?

A. Within the last several days.

Q. Will you turn to Exhibit I and explain the items listed there?

222 A. There is a typographical error listed in Exhibit I, which indicates the amount of our expenses in the operation of our company for the 12 months covered by this exhibit. That is not expected to recur, and after general conferences with all of the heads of the other companies it has been decided that such lists should be made. In writing the head of the first item "Bonuses," \$6,000, that word is used in error. It is not "Bonuses." It is incorrectly described. Those are actually gifts. They constitute gifts made to the Presbyterian Hospital, Red Cross, Boy Scouts, Community Chest, and so forth, in the amount of \$6,000. Then we have this legal expense, and that was an individual item that we paid out for the protection of our interests, by retaining an

attorney in Raleigh, in Washington, and so forth, and that will not recur. It is not expected that such an item will again show in the expense item of Horton Motor Lines.

Salary to H. D. Horton is mentioned, and that is a reduction in my salary from \$74,000 to \$36,000, contemplated under the proposed unification.

Q. Mr. Horton, referring to Exhibit J, you explained yesterday the outstanding preferred stock of the Horton Motor Lines, or you spoke of it, and said it was your intention to retire that stock before closing this contract, if approved. That is correct, is it not?

A. Yes, sir.

223 Q. That is employment stock?

A. Yes, sir.

Q. Sold only to employees?

A. Sold only to employees.

Q. The company has a right to call it upon 30 days' notice at par, plus accumulated dividends; is that right?

A. Yes, sir; as I stated yesterday, dividends have always been paid on a quarterly basis.

Q. And I believe you stated that the stock provides that it can only be sold to employees, and that the dividend will stop immediately upon any employee leaving the company.

A. That is true; yes, sir.

Q. And that any employee leaving the company can immediately have his stock redeemed?

A. It can be redeemed whether he leaves the company or not, on a moment's notice.

Q. The fourth paragraph of Exhibit J refers to a trust agreement under which certain stock of the Horton Motor Lines is being held. Will you explain that?

A. There are in a few instances savings and trust agreements having to do with my estate, and this Exhibit J reads that that trust agreement will be canceled. It has already been canceled, and the stock that is held in the trust agreement is now in my hands in Charlotte.

224 Q. There is also a reference in that paragraph to the policy or policies of insurance which were part of that trust.

A. Those policies of insurance will be taken over by me by payment to the company of their cash value.

Q. Has that been done?

A. It has not been done, but can be done on a moment's notice.

Q. Following that on Exhibit J there is a restrictive agreement, which was referred to yesterday in your testimony, and following that is the main agreement with the Conger Realty Company. Is that correct?

A. Yes, sir.

Q. Turn to the exhibit under the Conger Realty Company, please. Have you that?

A. Exhibit A of Conger?

Q. Yes, sir.

A. Yes.

Q. Exhibit A shows the outstanding capital stock of the Conger Realty Company. It further shows that you are the beneficial owner of all of the stock; is that correct?

A. That is true.

Q. Exhibit C is the balance sheet as at the close of business on April 30, 1941.

A. Exhibit B shows no exceptions to it, and then Exhibit C shows the rate of depreciation used by that company for the years 1939 and 1940.

Q. What does that statement that you just made—Exhibit what?

225 A. I said Exhibit C shows the rates of depreciation on the property owned by Conger Realty Company for the years 1939 and 1940. That is Exhibit C as is shown here. Also there is attached the balance sheet, which is shown on the second page of Exhibit C. That shows the assets, liabilities, and capital structure and net worth of the Conger Realty Company.

Q. Exhibit D?

A. Exhibit D is an income statement of the Conger Realty Company for the year ending April 30, 1941.

Q. Exhibit E?

A. Exhibit E is an exhibit showing the properties of Conger Realty Company, to whom leased, the monthly rental, and the expiration date.

Q. I believe it also shows the amount still due to the American Trust Company on outstanding indebtedness; is that right?

A. Not on this particular exhibit.

Q. The balance due—

A. Yes; it does on the bottom.

Q. That item of indebtedness is an outstanding lien against all those properties; is it not?

A. No; only part of them. Two of the warehouses are not covered by any bonded indebtedness.

Q. The asterisk or star indicates which one?

A. Yes.

Q. Will you explain Exhibit E please?

226 A. Do what?

Q. Exhibit E.

A. Exhibit E is an exhibit showing a lease to Brown Equipment Company, the terms of the lease, and the expiration date.

Q. Exhibit F is blank.

A. Exhibit F is blank, sir.

Q. Exhibit G?

A. Is the coverage of insurance of Conger Realty Company and its properties.

Q. Exhibit H.

A. Exhibit H indicates that there are no actions that are not covered by insurance against the Conger Realty Company.

Q. Exhibit I, blank.

A. It shows that there are no nonrecurring items in the expenses of Conger Realty Company.

Q. Will you turn to Exhibit A of Brown Equipment & Manufacturing Company, towards the latter part of the book, Mr. Horton?

Exam. BAKER. Mr. Cochran, I might suggest that since the application is a part of the record, unless you wish particularly to refer to something that is not self-explanatory, it is not necessary to go over that exhibit, or each exhibit, and explain it.

The WITNESS. I have it right here, now.

Mr. COCHRAN. That is a very good suggestion. Thank you.

By Mr. COCHRAN:

Q. Will you turn to Exhibit I, Mr. Horton?

227 A. Yes, sir.

Q. What does that exhibit refer to?

A. That exhibit shows a nonrecurring item in the amount of \$2,000 for an item that would not recur, which was the cost of the production of the die used in the casting of a marker light that the Brown Equipment & Manufacturing Company sells all over the United States. Once the die has been produced, there is no reason why it should again be reproduced; so that is considered a non-recurring item.

Q. That company has no transit operation whatsoever?

A. No, sir.

Q. You have no connection with rail or steamship companies?

A. No, sir.

Q. Horton Motor Lines is not affiliated with any rail or steamship company?

A. No, sir.

Mr. COCHRAN. That is all.

Exam. BAKER. Is there any cross-examination?

Cross-examination by Mr. WIFRUD:

Q. Mr. Horton, in reference to the Brown Equipment & Manufacturing Company, does the record disclose the volume of sales of that company during the past several years? I do not seem to find it in the exhibit.

A. The records of the company do; yes, sir.

Q. Well, is that record here?

228 A. I do not think it is required for previous years. Yes; it is, too.

Mr. JOSELOFF. Look at Exhibit B-6.

The WITNESS. You have to show a certain number of years. I am not sure that we have shown in this exhibit all the years of existence of the Brown Company.

By Mr. WIPRUD:

Q. I had in mind just the last several years. What years are shown in the exhibit?

A. This shows 1939, 1940, and the period ending April 30, 1941.

Q. What exhibit number is that?

A. This is B-6 continued; one of these long sheets. It is a group of long sheets.

Q. Does the record likewise show, Mr. Horton, the amount of such sales as have been made by the Brown Company to the Horton Motor Lines, Inc.?

A. I don't understand the question. I am sorry.

Mr. WIPRUD. Will you read the question, Mr. Reporter.

(Question read.)

A. Not in this record. Their sales to Horton are included in their sales to everyone else.

Q. Could you supply that information for the record?

A. Yes, sir.

Q. For the past several years.

A. Yes, sir.

229 Mr. WIPRUD. Thank you. That is all I have.

The WITNESS. It will take three or four days to get it, sir.

Mr. WIPRUD. That is all right, sir.

It will be included in the record?

The WITNESS. Yes; it can be developed before the hearing is closed.

Mr. WIPRUD. Thank you.

Exam. BAKER. Is there any further cross-examination?

Will Mr. Lawson testify in more detail with respect to the remaining competition?

The WITNESS. Yes, sir.

Mr. COCHRAN. Yes. We will have such an item as you refer to, and when he is on the stand we will introduce it as an exhibit, and that will bring out those matters in detail.

Exam. BAKER. Mr. Horton, perhaps you can better answer this question: What are your three principal competitors at the present time?



**The WITNESS.** Mr. Examiner, unless you indicate the territory, I could not answer that.

For instance, between here and Washington, the principal competitors are Davidson, Baltimore Transfer, and Cowan.

**Exam. BAKER.** Between here and what?

**The WITNESS.** Between Baltimore and Washington.

**Mr. JOSELOFF.** What do you mean by "here"?

230 **The WITNESS.** I mean New York and Baltimore and Washington—between New York and Baltimore and Washington, there are Davidson, Baltimore Transfer, and Cowan, three very large trucking operations: Between New York and Philadelphia, on the one hand, and Richmond and that territory on the other, the main competition is also Baltimore Transfer, Brooks Transportation, East Coast, and many others that I don't recall the names of now. In the territory principally between New York and Philadelphia, on the one hand, and the Carolinas on the other hand, it is Harris Motor Lines, Davis Motor Lines, Akers, Hutchinsoff, Brooks Transportation—

**Exam. BAKER.** I neglected to also include any companies that may be involved in this application. How would you rate Barnwell?

**The WITNESS.** Well, I left Barnwell out. Barnwell is in competition primarily between New York and Philadelphia, and the Carolinas also. He would only come in the last group that I have named.

**Exam. BAKER.** Would you say he would be one of the three principal competitors as far as that particular traffic is concerned?

**The WITNESS.** Yes, sir. In the territory south of the Carolinas, in the Georgia territory, there would be Hall, Akers, and Miller.

They would be the three. Barnwell is not running to Atlanta, and would not come in that group—Mason and Dixon—all substantial carriers.

**Exam. BAKER.** Those are all the questions I have at this time. The witness is excused.

(Witness excused.)

231 **Mr. COCHRAN.** Mr. Examiner, we have the secretary and treasurer of Horton Motor Lines here, who is in charge directly of the accounting and bookkeeping. He is available as a witness, if it is desired.

**Exam. BAKER.** The Examiner has no questions of that witness, unless there is something that you would like to develop.

**Mr. COCHRAN.** No.

**Exam. BAKER.** If so, you are at liberty to put him on.

**Mr. COCHRAN.** No. Thank you. We feel that the information is contained in the application.

Mr. Examiner, at this point, Mr. Joseloff will examine Mr. Clay, of Transportation. Immediately after lunch I hope to put Mr. LAWSON on. He has an exhibit prepared showing the competition, and he will be here this afternoon.

Exam. BAKER. Very well.

ALEXANDER STEPHENS CLAY, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Give your name and address to the Reporter, Mr. Clay.

A. Steve Clay, 1045 Hurt Building, Atlanta, Ga.

Exam. BAKER. Will you state your full name, please?

The WITNESS. Oh, yes. My full name is Alexander Stephens Clay.

232

By Mr. JOSELOFF:

Q. What are your position and duties with Transportation, Inc.?

A. I am now serving as president of Transportation, Inc., and also as its counsel.

Q. And as such do you have general charge of the affairs of Transportation?

A. Yes, sir.

Q. Will you state for the record the exact date of the incorporation of Transportation?

A. Transportation, Inc., was actually organized in March 1940. The exact date I do not seem to have, but it is in the record.

Q. If I were to refresh your recollection, would you state whether or not the date of August 3, 1939, is the correct date?

A. That is the date that the charter was secured. The consolidation of the two companies, or the reorganization of the two companies which form Transportation, Inc., was not completed until March of the following year.

Q. Going back, will you state briefly the history and development of Transportation to its present position.

A. Yes, sir. Transportation, Inc., a Georgia corporation, and the corporation now in operation, consists of two companies which had operated prior to that time, one in what we term "the

233 northern division" of our operation, which is in the States of North Carolina, South Carolina, and Tennessee, and in Georgia to Atlanta. That company was operated under the same name, but was a corporation of a different State—North Carolina, I believe. It was organized, I believe, in about 1933. It continued operations up until about 1937, when it became financially embarrassed to the point that it was deemed advisable by the corpora-

tion and its creditors to take some action to preserve the franchises, and a receivership took place. The company continued operating under the receivership for some several months. The receivership was dissolved, and a new corporation organized—another North Carolina corporation, I believe, of the same name, Transportation, Inc.

The southern end, which is from Atlanta south through Georgia, and then into Alabama, along the route to Montgomery, Ala., to Mobile, with an off-route point to Pensacola, through Mississippi and New Orleans, La., is, with the exception of the off-route point, the old operation of the Montgomery & Atlanta Motor Freight Lines.

This company, too, had a bad financial experience, and its creditors finally found it necessary to take it over, and it was made a part of the same organization.

The stockholders of the present corporation are creditors of both, or were creditors of both; and are now, in substantial amounts of both of these predecessor corporations.

234 Q. When you say the stockholders of the present corporation, does it not, that the stock is held entirely in your name as trustee?

A. Yes; it is.

Q. And when you refer to them as stockholders, you refer to them as beneficial stockholders?

A. Yes.

Q. You have, have you not, full power and authority as trustee to enter into these proposed transactions?

A. Yes, sir; I have. That has been provided in writing.

Q. And it is, with the knowledge and consent of the so-called beneficial stockholders?

A. That is correct.

Q. Have there been any amendments to the charter of Transportation, Inc., since the date of the hearings mentioned by the Examiner in Docket No. MC-F-1223, 1244, and 1264, which hearing took place in Washington beginning on July 15, 1940?

A. There have been done.

Q. And what is the present nature of the business conducted by Transportation?

A. It is a motor common carrier transporting over regular routes commodities generally.

Q. And would you state generally, in a sentence or two, the territory served by Transportation?

235 A. Yes. From Greensboro, N. C., to Charlotte, N. C., Greenville, S. C., to Atlanta, Ga., with a route into the West, over to Asheville, and from there to Knoxville, and

then another off-route point to Bristol, Va., as indicated on the map. South of Atlanta, from Atlanta to Montgomery, Ala., to Mobile, Ala., to New Orleans, with two off-route points, one to Pensacola, Fla., and another to Andalusia, Ala.

Exam. BAKER. Mr. Clay, by "off-route points," do you mean that you can serve no intermediate points between, for instance, Pensacola and regular route, or do you have a regular route off of your main operation to Pensacola?

The WITNESS. Well, it is the regular route off our main operation to Pensacola, and it so happens that we are not permitted to serve intermediate points. We go into Pensacola two ways. We go from Mobile to Pensacola. We are not permitted to serve intermediate points. We go from Flomaton, Ala., to Pensacola. We are permitted to serve intermediate points, but there are no points of any size between.

Exam. BAKER. It is not actually an off-route point, though, is it?

The WITNESS. You are correct. It is not.

Exam. BAKER. The same is true of Bristol; you have a regular route going to Bristol?

The WITNESS. That is true.

Exam. BAKER. I just wanted to clarify that.

The WITNESS. Well, I am glad you did that, because I  
236 used the wrong term.

By Mr. JOSELOFF:

Q. In any event, a more particular description of the territory served by Transportation, Inc., is included in the record on file with the Interstate Commerce Commission?

A. Yes, sir; it is.

Q. Do you happen to have the docket number of its rights?

A. Yes. Most of our rights are included under Docket MC-52692, and there are nine subdivisions of that docket. Then, our rights from Mobile, Ala., to New Orleans are still contained under Docket No. MC-63090. Certificates have only been granted with regard to subdivisions 1 and 5 of MC-52692, but in all instances where we are now operating we have received final compliance orders and have complied.

Q. And all of those operations are common carrier operations?

A. Yes, sir.

Q. Does Transportation, Inc., have any intrastate rights?

A. Yes; we have intrastate rights in Alabama, in Tennessee, and in North Carolina, and in every instance those intrastate rights are parallel to interstate operations, with the exception of a route from Knoxville to the North Carolina, via Dandridge and Newport, Tenn.

Q. How does the intrastate business compare with the interstate business of Transportation, Inc.?

A. About 7 percent is intrastate of the gross.

237 Q. Have you available tonnage figures for Transportation, Inc., for the year 1940 and the first six months of 1941?

A. Yes, sir. During the year 1940 we handled a gross of 263,000,000 pounds, or slightly in excess of that. During the first six months of 1941 we handled 171,000,000 pounds. I might add in that connection that it has been our experience that we have heavier tonnage during the last six months' period of a year; so I would anticipate that our tonnage for the year 1941 would be in the neighborhood of 400,000,000 pounds as compared with 263,000,000 pounds in 1940.

Q. Of this tonnage, how much is so-called interchange freight; that is to say, freight originating in the territory served by Transportation, Inc., for points beyond its lines, or vice versa?

A. I would estimate 55 percent of it.

Q. And where are the principal interchange points?

A. I would say that our principal interchange points are at Atlanta—that is, Charlotte, Greenville, Montgomery, New Orleans, and Knoxville.

Q. Now, do you see any benefit in the proposed transaction, insofar as the movement of its interchange freight is concerned?

A. Yes.

Q. So far as time in transit is concerned on shipments going out of your territory or coming into it?

238. A. Why, yes. I think it would be most beneficial from the standpoint of our company to eliminate interchange on that tremendous volume of freight which moves from southern points along the Atlantic Seaboard to points beyond our northern terminus, and that perhaps still larger volume which we have been handling which we receive from points north of our northern terminus, on the Atlantic Seaboard.

Q. What do you estimate would be the saving in time?

A. Well, I think it means that we would then be able to provide what our shippers have signified they wish, say, from Atlanta. That is second morning delivery in New York, which we are not able to give them at the present time, or we cannot assure them of it, anyhow.

Q. Do you have shipments moving to and from New England, as well as New York?

A. Yes. You see, there are a great many textile mills located in our territory. Then, of course, there are many more located in this New England territory.



We have this sort of a situation: In some instances, textile mills are established for providing the first process, and then they move on to an affiliate mill in New England for further processing. We have a very substantial amount of freight moving to and from the New England textile centers.

Exam. BAKER. To what points does that freight move in your territory, Mr. Clay?

239 The WITNESS. In our territory we have mills located in the neighborhood of Atlanta; others at Gainesville, Ga., and still others between Montgomery and Mobile, Ala.; also between Atlanta and Montgomery and in the neighborhood of La Grange, Ga., West Point, Ga., and Lanett, Ala.

By Mr. JOSELOFF:

Q. What can you tell us about the present load factor of Transportation, Inc.?

A. Well, we have restrictive wage laws in several of the States in which we operate. For example, in Alabama and in Tennessee, we are limited by law to a 15,000-pound pay load. We find the load factor to be 73 percent. Where we are not restricted it is fixed at 25,000 pounds because of the size of our equipment, and our load factor there has been about 76 percent capacity.

Q. Now, do you see room for improvement in that load factor which would result from the proposed unification?

A. Yes; I certainly think so. We are convinced that that will be the case.

Q. A list of terminals operated by Transportation, Inc., is set forth in Exhibit E in the application, is it not?

A. Yes.

Q. Will you please state for the record your opinion as to the adequacy of these terminals, as presently constituted, and what might be done or should be done in the way of improvement?

240 A. As I testified on the Transport hearing, that has been a major problem in our operations always. Since I last testified, with the exception of our terminal at Charlotte, N. C., I do not believe that condition has been improved.

Exam. BAKER. Mr. Clay, you recognize that the record in the other proceeding is not a part of this proceeding, and it will be necessary for you to offer anything here that you want in this record.

The WITNESS. Yes; I will do that. We do not have adequate terminal facilities at any place over the entire system, with the exception of Charlotte, N. C., and Greenville, S. C. They were not adequate more than a year ago. They were not adequate in

1940, and, of course, with the increased tonnage, they have become more of a problem than ever before.

By Mr. JOSELOFF:

Q. Has your company been in a position to develop or improve these terminals, since you say they have not been adequate for the past year or so?

A. No, sir. Obviously, we have not been, when you see our earnings statements. We have this problem, Mr. Joseloff. There are no buildings available at these places which are suitable for our purposes, and we have no money of our own with which to build terminals—none that is available for that purpose, and we are unable to make the construction of a terminal by some outside person attractive because of our lack of adequate capital, working capital.

241 Q. Is it not a fact that you have tried to influence outside capital to construct a terminal for your company, and that they are willing to do so, but that they are unwilling to run the risk of the financial investment because of the condition of Transportation, Inc., financially?

A. Yes. We are faced with that situation at more than one place, and just recently our Mobile terminal was so inadequate, and we figured that at Mobile and Atlanta and at some of these other points we are losing thousands of dollars because we cannot handle the freight properly, and we cannot move it faster. The Mobile situation became so bad that although we recognized it would be difficult to attract someone, we still undertook to do it, and we have our plans already drawn. We have people who are ready to go ahead, but we cannot move until we are in a position to assure them of our ability and that we are provided with sufficient working capital.

Q. Do you therefore see, as one of the tremendous benefits to Transportation, Inc., of the proposed unification, a much needed improvement in your terminal facilities throughout practically your entire system?

A. Yes; if I had the one thing that I believe to be more beneficial than anything else, it would be to provide us with an adequate place to work in and handle our freight.

Q. In regard to maintenance of equipment, will you explain the maintenance set-up of Transportation, Inc., with reference  
242 particularly to its present adequacy and need for improvement?

A. Well, just as we will have a building that is not designed—and this is the general situation—as a terminal, we will be in the same position in regard to the mechanical shops. We undertook to maintain shops at various points, but the working conditions

there are such that you really have no right to expect an efficient performance. For example, in Mobile last year it was necessary that our mechanics there work in the mud all the year. They had no floor. And the same thing is true in Atlanta. We have no place for them to work, and it makes it difficult to keep skilled mechanics. We have good ones but we cannot expect a man to want to do a job in that sort of place, if he can find another place that is more suitable, even though the compensation might be the same.

Q. Do you have a lot of repair work done at the present time by outside repair shops?

A. Much too much, because of that situation.

Q. State whether or not you feel that periodical inspections of your fleet would be quite helpful in maintenance.

A. Yes; I do, and, of course, at the present time we are not in position to provide that.

Q. Now, state whether or not the insurance coverage by Transportation, Inc., is, in your opinion, adequate and above the requirements set forth by the Interstate Commerce Commission?

A. Yes, I think so. Would you like for me to go into that  
243 question somewhat?

Q. No. I think unless the Examiner wishes it, a general statement to that effect in the record is all I care for. Does the Examiner care for it?

Exam. BAKER: I think he has answered sufficiently.

By Mr. JOSELOFF:

Q. Now, Mr. Clay, from the standpoint of competition, do you see any effect of any nature on competition by the inclusion of Transportation, Inc., in the proposed unification?

A. None whatsoever. There are, of course, some instances where north of Atlanta—and north of Atlanta only—our operations parallel some of the companies that are parties to this application, or that will become parties of the proposed unification, but in every instance where that occurs strong competition remains, and not ever by more than one carrier that is well established and doing a substantial volume of business.

Q. For the record, it is my understanding, and I believe it is yours, Mr. Clay, that a more detailed statement of competition where Transportation, Inc., does compete with any one or more members of the proposed unification will be submitted by another witness?

A. Yes; that is so.

Q. The witness referred to by Mr. Cochran.

A. Yes.

Q. If I understand you correctly, then, the vast majority  
244 of the territory served by Transportation, Inc., is not at

all competitive with any of the other companies in the proposed unification?

A. That is true.

Q. Except for some small instances north of Atlanta.

A. That is true.

Q. Now; could you tell us also your estimate as to how much of the business of Transportation, Inc., is involved in that small segment to which I have just referred?

A. Well, of course, at one point there is a substantial part of our volume, and I believe it is only at that one point it moves. Horton and ourselves compete from Charlotte to Atlanta.

Q. But what I had in mind was in comparison with your total amount of business, the business done by Transportation, Inc., how does that volume stand up?

A. I would be afraid to hazard a statement about that, Mr. Joseloff. It would just be a guess on my part, but I would say that the greater part, of course, would not be affected.

Q. Would you say it would be less than 25 percent, or do you think that would be conservative?

A. Yes; I can certainly say that; yes.

Q. Now, Mr. Clay, you have been here while Mr. Horton testified and while Mr. Seymour testified, today and yesterday.

A. Yes.

245 Q. And you listened to all of their testimony and are acquainted with what was said, particularly with reference to the benefits to be derived from the proposed unification, to the public, the shippers, and the companies.

A. Yes, sir.

Q. I will ask you whether or not you are in accord with the statements that they have made?

A. Yes; I most certainly am.

Q. And for fear of making the record repetitious and having you simply repeat in your own words what was said by these other two witnesses, I will ask you to kindly state for the record whether there are any additional factors which you would like to comment on at this time—factors in addition to what were stated by the other witnesses.

A. Well, there are no general factors that I could add, of course, but I believe that the benefits they have pointed out would all apply insofar as my own line is concerned, and then, of course, we have difficulties which are peculiar to ourselves, and I have undertaken to suggest some of those difficulties, which will be cleared up if this company is permitted to become a part of this unification.

Q. In general terms, then, do you see a general improvement in the service and a more economical operation resulting from the

proposed unification, insofar as it affects the lines of Transportation, Inc.?

246 A. Absolutely. It will provide something that we have been handicapped without for a long time. It will provide us with an adequate working capital.

Q. While we are on that subject, which, I take it, deals with the financial set-up of Transportation, Inc.—

A. Yes.

Q. Could you state how much additional cash or working capital would be needed for Transportation, Inc.?

A. Well, this company operates over this vast territory that I outlined. We are handling what I would estimate to be 400 million pounds of freight annually, and we have more than 550 employees. I would say that a hundred thousand dollars would provide an adequate working capital.

Q. Now, in addition to that amount which, as I understand you correctly, would be in the corporate set-up as working capital, is there need at the present time for additional cash in the Transportation, Inc., set-up to facilitate or ease up its present financial condition?

A. Yes. Our statement clearly shows that there are a great many liabilities that the company has that should be paid, and ought to be paid immediately. It is all short term.

Q. Now, if that were done would that improve not only the condition of Transportation, Inc., but its ability to serve its customers and its dealings generally with the public?

247 A. Oh, yes. It would improve the company in every respect. It would provide confidence insofar as the public is concerned. It would improve the morale of the personnel of the organization, and it would make our creditors very happy.

Q. Well, I wish you would comment a bit on the improvement in the situation as to the morale of your organization. Do you have any specific incidents in mind wherein that situation would be improved?

A. Yes. We have a great many people connected with our organization who have been with us many years, and then, of course, there is a certain percentage of your personnel that turns over rather rapidly. Regardless of who they are, whether they are truck drivers or mechanics, or whoever they may be, they pretty well sense a situation. They know that there has been this condition there, these debts that were, for the most part, accumulated during the depression years, and during the final stages of the development of this industry. They know that they are there, and it unconsciously affects them in their work. They do not have a



sense of security. As a result they frequently leave us and go to other places, not for more money, but simply because they feel that their futures are more likely to be provided for at those other places. It would, of course, clear that up immediately.

Q. What is your best estimate as to the additional case that would be needed to straighten out the financial picture of Transportation, Inc?

248 A. Well, when I referred a few minutes ago to a hundred thousand dollars, I meant a hundred thousand dollars working capital in addition to the discharge of current liabilities. I do not have the statements before me, but whatever the accumulated liabilities are—and I believe all the liabilities are current—they, of course, should be paid.

Q. I think, if you will refer to Exhibit B-2 of the application, you will find it there.

A. These total current liabilities are shown to be in the amount of \$336,465.14, as of April 30, 1941. Of course, some of that is items that you will always have. Of course, you will always have a certain amount that would be due on interchange and current taxes, but I would, from just glancing at the statement, think that there is about \$250,000 there that is needed to get the company's current position right.

Q. Then, in connection with that factor, will you please turn to Exhibit J of Transportation, Inc., contract, and explain for the record the rationale in the determination of 5,500 shares of stock of Associated Transport exchanged for the stock of Transportation, Inc.?

A. Yes. Well, obviously, Mr. Joseloff, if we had followed the formula that was agreed upon by the other participants, the stockholders of this company would have realized nothing whatsoever. I do not think that would have been a just result, and I think the other members of this group did not feel that—  
249 it would be a just result, because I think that we have brought this company through the most difficult stage; we have developed it, and we have struggled along here with it to a situation where, if we were provided with an adequate working capital I think it would begin to show a profitable experience immediately. It serves a very important part of the nation, and one that is developing quite rapidly. I suppose that most of the factories, aside from those that have been built just because of the existing emergency, of all kinds, are being established in the Southeast, and in that territory that we serve below Atlanta we have a great building program, which has been going on down there for the last few years, and pointing to a much greater one in the future. So when Mr. Moore discussed this matter

with these gentlemen they simply arbitrarily arrived at this figure, because they had no formula to follow; but I certainly think with those franchises which we have developed and the good will that has been developed, in spite of the financial condition of the company, we have been able to render a service that is badly needed in this territory, and we have struggled along with it somehow.

Q. What is your opinion with regard to the profit possibilities of Transportation, if it got the needed financial assistance? Have you any idea as to what would happen to profits as a result?

A. Well, no; I would not undertake to say what it would be.

250 Q. You understand, Mr. Joseloff, I am not experienced in the motor carrier business. At the present time I am undertaking to engage in the general practice of law. That is my profession. But from my own experience and from consulting members of this group and other members of the industry, I know of no reason why, if this company was really provided with this thing that it needs so badly, it should earn a profit in the neighborhood of \$10,000 a month before, of course, deducting taxes, and I should say that the possibilities for the future are unlimited.

Q. What do you estimate your gross volume of business in dollars would be for 1941?

A. \$2,000,000.

Q. Now, with reference to Exhibit J, regarding the extension of debts of Transportation, Inc., in the amount of \$5,000 or more, I ask you whether or not that has been complied with.

A. Yes; it has been complied with. Mr. Wiley Moore is on excellent terms with all those companies, and we had no difficulty whatsoever in securing that arrangement.

Exam. BAKER. Could you identify Mr. Moore? Is he the principal beneficial stockholder of Transportation, Inc.?

The WITNESS. No, sir. It is not exactly that arrangement. He is just as interested as if he owned the stock, because the greater portion of the stock of the company actually belong to his  
251 children, in that it belongs to Moore, Inc., and the sole stockholders of the corporation are Mr. Moore's children.

Exam. BAKER. Thank you.

By Mr. JOSELOFF:

Q. Referring to Exhibit H, Mr. Clay, would you state first whether or not those suits are covered by insurance?

A. No, sir; none are covered by insurance that are there listed.

Q. Will you explain what their present status is?

A. Yes, sir. The first one, Caldwell & Carnathan v. Transportation, Inc., arises because of an alleged violation of the Fair Labor Standards Act. It is a suit to recover wages. The amount of the suit, including penalties and everything, is \$1,737.19. We do not feel that there is any liability in this case, because our records were investigated by a representative of this department, and he took no exception to our position whatsoever, and did not include it in his recommendation. He found that in some instances the company had inadvertently, according to his position, violated the Act. Barker v. Pitman and Transportation, Inc., arises in this way: We bought, or we entered into a contract to buy rights which we thought belonged to J. A. Pitman. It later developed that he had no rights as between these points, but there is some question as to whether we are indebted to him in an amount of money. This man Barker is one of the creditors and  
252 is undertaking to reach him if it is determined that we owe Pitman anything. Those are the only ones listed here.

Q. How much is involved?

A. Well, the maximum amount which could be involved would be \$2,000, but in no event do I think that our liability could exceed a thousand dollars.

Q. Do you say anything with regard to simplification of relations with public regulatory bodies that would result from the proposed unification?

A. Oh, yes; of course. We find it most difficult, because of our handicaps, naturally, to provide proper facilities for keeping up with that sort of thing. The small operator has not the organization to provide facilities necessary for even ascertaining what the laws, much less with providing means for compliance with them, and I think we would be in a much better position to comply and really provide a service to the regulatory bodies in that respect. I think it is at present recognized that most of these regulations do have a benefit on the industry, and I think it would materially assist the regulatory body.

Mr. JOSELOFF. I have no further questions.

Exam. BAKER. We will recess for lunch until 1:45 o'clock p. m.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 1:35 o'clock p. m. of the same day.)

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AFTERNOON SESSION 1:45 P. M.

Exam. BAKER. Come to order, please. Mr. Joseloff, did you have any additional questions?

Mr. JOSELOFF. I have no further questions of Mr. Clay. Thank you.

Exam. BAKER Cross-examination?

Mr. WIPRUD. Well, after you, Mr. Examiner, if I may. I may cover the points you have in mind.

Exam. BAKER. I would prefer you to go first.

ALEXANDER STEVENS CLAY, resumed the stand and testified further as follows:

Cross-examination by Mr. WIPRUD:

Q. Mr. Clay, does there exist substantial competition between your lines and the Horton Company, one of the companies in this proposed unification, north of Atlanta?

A. Yes, sir; from Atlanta to Charlotte; Atlanta, Georgia, to Charlotte, North Carolina. I don't know whether it is competition for him, but we have a substantial movement of freight.

Q. Well, there is substantial competition between both of them?

A. Yes, sir.

Q. What is your competition south of Atlanta?

A. South—

254 Q. To New Orleans, I mean to say?

A. South of Atlanta to New Orleans the Dixie Freight Lines of Atlanta, Georgia, is our sole competitor to Montgomery. The Motor Terminal & Transportation Company is our sole competitor from Montgomery to Mobile. We have no competition into Pensacola from Flomaton, Alabama. We have competition into Mobile from—I mean into Pensacola from Mobile, Alabama. That is the Union Express Company. As between Mobile and New Orleans our competitors are: Herrin, Mobile Express Company, Acme Fast Freight Lines, and, I believe, McDonough Express. I might add in that connection that that is a rather sparsely populated territory, and, while other carriers have served us between those points we have finally gotten down to the limited competition that I have outlined to you.

Mr. JOSELOFF. Doesn't the Acme Freight Line go on down south from Atlanta over—

The WITNESS. Yes; they really compete with us from—they compete with us from Atlanta to New Orleans, but they do not compete with us to most of the intermediate points because they go in a different direction.

Mr. JOSELOFF. But they serve the same points?

The WITNESS. Oh, yes; they serve New Orleans from Atlanta just as we do. They also serve Mobile from Atlanta just as we do, but they get there from a different direction and only directly compete with us from Mobile to New Orleans. That—

255 or, rather, they parallel our lines from those points.

By Mr. WIPRUD:

Q. Would the merger of Horton Lines and the Transportation place the Associated in a dominant position, insofar as competition is concerned north of Atlanta in the area now operated by Transportation?

A. In my opinion, absolutely not. There are at least three or four other carriers who are capable of and are providing very substantial competition as between those points. Their tonnage is substantially greater than ours as between those points, I imagine. I don't know that to be true, but that would be my opinion.

Q. Will they operate a through service such as proposed by Associated?

A. Yes. Yes; many of them did a through service as between Atlanta and Charlotte.

Q. As between Atlanta and Charlotte?

A. Yes.

Q. Well, now—

A. And north of there. Many of them go right on up into the—into New York.

Q. Well, you say, "many of them." How many?

A. Well, Mr. Horton—I mean Mr. Lawson who will follow me can give you that in detail, and rather than to undertake to do it without preparation, I think it would be better for you to get it from him because then I know that it would be  
256 accurate. I am sure I would miss some of it.

Mr. JOSELOFF. I might state for the record and to assist you, sir, that we have got a detailed exhibit showing the competition between those points, and I think it will come out much better from that witness and he can give you the information you desire.

Mr. WIPRUD. All right, sir. Just one additional question, Mr. Clay.

By Mr. WIPRUD:

Q. In your opinion, would it be feasible to operate a truck from New Orleans to New York without interchange?

A. My own opinion is, since I am not experienced in this particular type of business to any particular degree, it is worth just that. My own opinion is that it will be feasible if—certainly if you can switch tractors and carry it on up that way, and that would probably require some reciprocal agreement with regard to license tags. But it would certainly, it seems to me be feasible in that respect because it would eliminate handling the loading and unloading of trucks. That takes time and that is where most of your losses occur.



Q. In other words, it would be the tractor that would go through?

A. Yes—the trailer.

Q. The trailer that would go through and not the tractor?

A. Yes, sir.

257. Q. Would weight restrictions in the various states have any effect upon that theory?

A. Yes; it is conceivable that it would have a very substantial effect on it because whether it would be practical or not to take a smaller load, as we are permitted in the State of Alabama, for example, up in states where you are permitted a much greater load, I doubt that it would be practical unless you could assume that those laws would eventually be made uniform, or that those restrictions would be more reasonable. There have been substantial modifications in the Alabama laws already. They have raised that limit, but I still don't think that it is enough.

Mr. WIPRUD. I understand, Mr. Examiner, that there will be another witness on on the question of elimination of competition. That is all I have of this witness.

Exam. BAKER. I might state that even though there will be a witness to present in exhibit form remaining competition, it might be well to develop the question from this witness on oral testimony, so far as he knows, since undoubtedly he is more familiar with his own competition than Mr. Lawson will be.

Mr. WIPRUD. I understand this witness is not an operator.

The WITNESS. I know my competition south, but he knows it north better than I do because it is his competition too.

Mr. JOSELOFF. Well, isn't this situation, Mr. Examiner, that from Atlanta south there is no effect on competition  
258 insofar as members of the proposed unification are concerned because Transportation does not in any way, shape, or manner compete with any of the carriers in this proceeding south of Atlanta? That leaves us, then, with the situation north of Atlanta which is served not only by Transportation but by Horton Motor Lines; and the Horton Motor Lines have a witness who has developed that phase of it, so that there will just be a duplication of testimony on competition from Atlanta north because both the companies operate and both know the operations north of Atlanta.

Exam. BAKER. That no doubt is true to a large extent, although it may be that different ones have different competitors so far as the importance to them is concerned.

Mr. JOSELOFF. Well; I could develop from this witness by a question or two just what the nature of the competition is between Atlanta and the north, say, Atlanta and Charlotte, if you would care to have that for the record.

Exam. BAKER. I would say it would be well to develop from this witness remaining competition so far as there is any duplication between the routes of Transportation and the other carriers involved in this proceeding.

Mr. JOSELOFF. May I ask the witness a question, then?

Exam. BAKER. Yes.

By Mr. JOSELOFF:

259 Q. Mr. Clay, I ask you to refresh your recollection with this document which I hand you which is a report on carriers competing with Transportation north of Atlanta, between Atlanta and Charlotte, and with that—with your recollection refreshed from that document, will you please state for the record carriers north of Atlanta between Atlanta and Charlotte competing with Transportation?

A. Our principal competitors as between Atlanta and Charlotte are Akers Motor Lines, Inc.; Lewis & Holmes Freight Corporation, and Miller Motor Express; New South Express Lines, Inc., Roadway Express, Inc., and W. H. Tompkins also compete with us as between those points.

Mr. WIPRUD. This is Atlanta and Charlotte?

The WITNESS. Yes, sir.

By Mr. JOSELOFF:

Q. Now from your—

A. Now, also in response to your question, the Akers Motor Lines, Mason & Dixon Lines, Inc., and Roadway Express, Inc., operate into New York, all the way into New York.

Mr. WIPRUD. From what point?

The WITNESS. Atlanta.

Exam. BAKER. Mr. Clay, you are speaking now—

By Mr. JOSELOFF:

Q. Whether or not the Atlantic States Motor Lines—excuse me.

Exam. BAKER. You are stating now from personal knowledge that the data you have before you is correct; is that right?

The WITNESS. Yes, sir; I—I have to look at the data in order to be assured that I am correct.

260 Exam. BAKER. It merely refreshes your recollection?

The WITNESS. That is right.

By Mr. JOSELOFF:

Q. State whether or not Atlantic States Motor Lines also operate—

A. Atlantic States Motor Lines also operate from Atlanta to New York and does provide a daily service as between those points.

I am not familiar with the exact direction of their line, but I know substantially where it is.

Mr. JOSELOFF. Does that clear it up, if the Examiner please?

Mr. WIPRUD. May I ask some further questions on this point?

The WITNESS. Yes, sir.

By Mr. WIPRUD:

Q. Can you give us, Mr. Clay, the relative volume of business that is conducted by the companies that you have mentioned between Atlanta and Charlotte—operating between Atlanta and Charlotte, as compared with the volume of business which would be rendered by the merged companies, that is, assuming that Horton and Transportation were merged, could you give us the comparative volume of business of the remaining truck operators?

A. I can provide you nothing more than an opinion, sir, because I have no way of knowing the exact volume of business of these other carriers. I presume I could only hazard a guess about it.

I don't know what it would be.

261 Q. Would you say that the merged companies—I am speaking now of Horton and Transportation—would, based upon their past years experience, be the dominant carrier between those two points?

A. The dominant; no, sir.

Q. Would they transport in volume more than any other single company?

A. I think that is conceivable.

Q. Well, is it a fact, so far as your knowledge is concerned?

A. I don't know. I don't know. The records of the Commission would show that very quickly.

Mr. WIPRUD. Well, I think it is important, Mr. Examiner, to know the relative volume of business between the points where competition is to be somewhat restrained—restricted, rather, in order to give an accurate picture. If this witness does not know, we hope that there will be other witnesses who do know. He is president of Transportation Company and has apparently made a study of this proposed application and its effect upon competition.

Exam. BAKER. Mr. Wiprud, from experience in connection with the other application before us last year on the Transport Company, I think I could state that certainly the records of the Commission would not disclose in connection with any of these competitors what portion of their business is derived

262 from operations between certain points; and I doubt if applicants would have any witnesses who would have knowledge of the volume of business done by their competitors between certain points. I believe the only way in which that

could be obtained would be to have a representative of each one of those competitors here to testify himself. Perhaps his records would be kept in such a way that he could state that, but, on the other hand, I don't see how I could require applicant to give such testimony, knowing its unavailability.

Mr. WIPRUD. Well, in view of the Examiner's statement, may I inquire of this witness—and I do—what is the volume of business based upon last year's experience, transported by Transportation between Atlanta and Charlotte?

The WITNESS. As between Atlanta and Charlotte I would—I think I have jotted that figure down. I would rather rely on it if I have it. [After a pause.] I would say ten million pounds a month, would be my estimate.

By Mr. WIPRUD:

Q. Have you any way of estimating that in dollars gross?

A. No, sir; I have no such break-down. It could be—it can be ascertained.

Q. I think perhaps it might be a clearer way to express it to get the gross amount of business between those points, if that is convenient, Mr. Clay.

A. Be very glad to.

Q. And your line extends further, does it, north of 263 Charlotte to—what is the name of your northern terminus?

A. Greensboro.

Q. Greensboro?

A. Yes.

Q. Could you supply it also for that segment?

A. Yes, sir; I can.

Q. Have you any knowledge as to the volume of business of the Horton Lines between Atlanta and Charlotte?

A. No, sir; absolutely not.

Q. Or between Charlotte and Greensboro?

A. No, sir; I do not.

Mr. WIPRUD. That is all I have, Mr. Examiner.

Mr. WOODS. I have just a couple of questions, Mr. Examiner.

By Mr. WOODS:

Q. Mr. Clay, your line runs into Knoxville; does it not?

A. Yes, sir.

Q. And at Knoxville don't you accept freight destined for New York for interchange at some other point, for instance Winston-Salem?

A. We may have some freight moving that way. I don't think it is substantial, sir.

Q. But you do have some?

A. Yes; there would be some.

Q. And you do also interchange at Winston-Salem or some other point on your line with other carriers' shipments out  
264 of New York or that section for Knoxville territory?

A. I think that is true.

Mr. Woods. That is all.

By Mr. O'BRIEN:

Q. Mr. Clay, are you familiar with the local express operation out of Atlanta into New York?

A. I know that it is. I can't say that I am familiar with it. I know that they operate from Atlanta to New York.

Q. Do you know that they run direct from Atlanta to New York or from Atlanta to Charlotte and break down at Charlotte?

A. I was under the impression that it was direct. Perhaps they do break down, Mr. O'Brien.

Q. Now, I believe that earlier you testified as to some 550 employees; so far as your company was concerned. Can you give us a breakdown of those employees—

A. Yes, sir.

Q. As to their various classifications and the number of men involved in each classification?

A. Yes, sir.

Mr. JOSELOFF. May I just make this statement, now, Mr. O'Brien? It might help you. We are preparing an exhibit—you weren't here yesterday, but the Examiner has requested that we prepare a breakdown of all of the companies, and that is in the process of preparation. It will show that for all the companies.

Mr. O'BRIEN. All right. Thank you very much. That  
265 will be all.

Exam. BAKER. Any further cross-examination? Mr. Clay, were all of the carriers named by you as competitors between Charlotte and Atlanta class one carriers?

The WITNESS. Yes, sir; I believe that every—I know that all of our—those that I designated as the principal ones are. I believe that they all are.

Exam. BAKER. There is also some competition between your company and Barnwell Brothers; is there not?

The WITNESS. Yes, sir. Yes, sir; there is.

Exam. BAKER. Between what principal points?

The WITNESS. Well, we compete—the principal points with which we compete with them is from Greensboro to Asheville.

Exam. BAKER. You also compete, do you not, between Asheville and Charlotte?

The WITNESS. Yes, sir.

Exam. BAKER. And between Charlotte and Greensboro?



The WITNESS. Yes, sir.

Exam. BAKER. Is there substantial competition between your company and Barnwell Brothers between those points?

The WITNESS. No, sir. Well, I—of course, "substantial" is a relative term. We have our tonnage as between Greensboro—Greensboro and Asheville which is the point where we have the most substantial competition, I believe; it is about 600,000 pounds a month.

266 Exam. BAKER. Who would you say is your principal competitor north of Atlanta?

The WITNESS. That would—that would be hard to say. I don't think you could say any one carrier was our principal competitor. I would say that our principal competitors are Lewis & Holmes, Horton, Mason & Dixon, Miller Motor Express.

Exam. BAKER. Has there been any substantial change in the financial condition of Transportation, Inc., since April 30, 1941?

The WITNESS. No substantial change. It has not improved any, but it is—it is probably a little worse. We have continued to experience the loss.

Exam. BAKER. I notice that in 1940 there was an increase over 1939 of about \$120,000 in your total operating revenues, but it appears that your deficit increased from about \$13,000 to \$41,000. Is that about right?

The WITNESS. Yes, sir; it looks like we worked around to a situation now that the more business we do the more money we lose.

Exam. BAKER. Do you have any explanation for that?

The WITNESS. Yes, sir; I do. You must remember—first and primarily, I think it is these—the fact that we undertake to go on without adequate capital. We have much borrowed money. We pay fairly high rates of interest on it. Secondly, while we

267 have managed to do fairly well with our equipment, we have been able to do nothing about our terminal facilities. The delay requires that we do a lot of shifting around, and the result is we damage some freight that ought not to be damaged. Our men don't have the proper places to work and can hardly be blamed for much of the damaged freight. It takes a longer time to do the job and they are not equipped to where they can do it well. We have not yet been able to—the carriers generally have not yet been able to adjust themselves to the new laws which were passed in Alabama which, for the first time, provide intrastate rates and tend to eliminate a practice where some of our competitors were inclined to treat shipments which came to—which were physically interrupted as having come to rest, and becoming intrastate shipments and, therefore, not subject to rates and regulations at all. The laws have now been provided, but it is going to take time to

put them into effect and we are unable, have been unable, to get our fair share of business because of the fact we have undertaken to be a law abiding carrier. Those are some of the things, Mr. Examiner.

Take, for example, in Atlanta: We are so badly lacking in adequate terminal facilities there that we have one warehouse for outbound freight, another warehouse located more than a mile from that point for inbound freight, and our shops located perhaps three miles from both, and then our offices at another place.

268 Exam. BAKER. In case this transaction is approved, do you anticipate Transportation could use the facilities in Atlanta of Horton Motor Lines?

The WITNESS. Mr. Horton and I have discussed that, and I don't know whether that will be practical or not, but certainly I think that if the application is approved the new corporation would recognize an immediate need for that—for an adequate terminal and it would have to be provided in some way. I estimate that we are losing eight or nine hundred dollars a month because of that condition in Atlanta.

Exam. BAKER. There are also a number of other points served by you where you have terminals at which Horton also has terminals; are there not?

The WITNESS. Yes, sir. Yes, sir.

Exam. BAKER. The map indicates that Transportation, Inc., operates to Dothan, Alabama, from Flomaton, I believe it is. Is that correct?

The WITNESS. No, sir. That map was made from an old application and it does not correctly describe it. Actually—well, it shows on here. It isn't correct in the application either. We actually go to Andalusia by way of Opp, and for me—we go to Andalusia and to Opp. I don't have a map before me, so I can't point out that exact location, but we no longer operate into Dothan.

269 There is a shorter route from Montgomery to Dothan, and we found that it was not practical to undertake to provide service into that territory by the more circuitous route which we were authorized to provide a—over which we were authorized to provide a service.

Exam. BAKER. So Transportation, Inc., then, disposed of its operating rights between Opp and Dothan; did it not?

The WITNESS. Yes, sir; to the Acme Freight Lines.

Exam. BAKER. Do you presently interchange freight with any of the carriers here involved?

The WITNESS. Yes, sir; we are—we have a very substantial interchange arrangement with Barnwell Brothers.

Exam. BAKER. At what principal points?

The WITNESS. At Charlotte:

Exam. BAKER. Do you interchange any substantial amount with Horton Motor Lines?

The WITNESS. Not substantial; no, sir. We interchange with them but I wouldn't term it substantial.

Exam. BAKER. Do you interchange with Southeastern Motor Lines?

The WITNESS. Yes, sir.

Exam. BAKER. At what point, principally?

The WITNESS. We would have some interchange with them at Bristol. I know of no other point that we have any substantial interchange with them.

Exam. BAKER. What has been your experience recently with respect to obtaining employees? Have you had any difficulty  
270 in getting sufficient trained employees?

The WITNESS. Yes; we—we have—that has been particularly true of mechanics. There is a great deal of building going on in the south for defense projects and there is a tremendous amount of shipping going on at Mobile and Pascagoula, Mississippi, and there is a demand—particularly a demand for mechanics and we have lost men and we are really very much concerned as to whether the mechanics are going to be available to work or not.

Exam. BAKER. What is the situation with respect to drivers?

The WITNESS. With drivers we have—find it difficult to get trained—to replace drivers that do leave us. Those that we have we are very well satisfied with, but our new drivers have been sufficiently inexperienced to where we are—have really been concerned about it. We have had some trouble because of it, not any more than enough to concern us, but we have been watching it very carefully and we are a bit concerned about that too.

Exam. BAKER. Are there any additional questions of this witness? Witness excused.

(Witness excused.)

Exam. BAKER. Mr. Joseloff, is Mr. Lawson ready to testify yet on this competition? I feel it would be better if he  
271 could testify before some of the other gentlemen representing individual companies.

Mr. JOSELOFF. Mr. Cochran plans to put him on, and if we might have a short recess at this point—

(Discussion between Counsel ensued off the record.)

Mr. JOSELOFF. If it is satisfactory to you, Mr. Examiner, Mr. Cochran would like to put on Mr. Sutton in answer to questions in which Mr. Wiprud was interested so far as the Brown Equipment

Company was concerned, and after that we will have had an opportunity to see Mr. Lawson, to see if he is ready to go on with his competition exhibit before we put on the other carriers.

Exam. BAKER. Very well.

Mr. BURNETTE. Mr. Examiner, before you call the next witness may I make a statement and ask a question?

Exam. BAKER. Yes; Mr. Burnette.

Mr. BURNETTE. With respect to the proposed report in this case I would like to leave with Mr. Connolly on my right the right to speak for me with respect to the proposed report. I am of the opinion at this time that we would like a proposed report, and will it be permissible for Mr. Connolly to speak for me?

Exam. BAKER. Will that be satisfactory?

Mr. SULLIVAN. We have no objection to it, I wouldn't think.

272 Mr. BURNETTE. The next statement—the statement, rather, that I would like to make is this: I am with the Lynchburg Chamber of Commerce, a City of 45,000. We have approximately eleven motor carriers serving Lynchburg. Out of the eleven we have seven that are what we term sufficiently strong carriers. This proposition was submitted to my traffic committee and to the Board of Directors of the Chamber of Commerce, which committee and board instructed me to enter an appearance and to approve the present application with one provision: And that is that the financial set-up and structure is fundamentally sound, that there is no watered stock and that it is a good, sound business proposition. Thank you.

Exam. BAKER. All right, Mr. Cochran.

Mr. COCHRAN. Mr. Sutton.

Mr. SULLIVAN. Excuse me, Mr. Cochran. Would you like—Mr. Burnette, would you like to have us mail to you, if you are not going to be back, a copy of any other exhibits, the financial exhibits with respect to the matters you discussed just now, at your office?

Mr. BURNETTE. I will appreciate that very much.

Mr. SULLIVAN. We will be happy to do it.

Mr. BURNETTE. All right, sir.

Mr. SULLIVAN. Could I have your address, then?

Mr. BURNETTE. Yes, sir.

273 J. A. SUTTON, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. What is your place of residence?

A. Charlotte, North Carolina.

Q. What companies are you connected with?

A. I am connected with Horton Motor Lines, Inc., of that city as secretary and treasurer, and I am a director of Brown Equipment & Manufacturing Company of that city.

Q. Are you acquainted with the operations of Brown Equipment, generally speaking?

A. I am.

Mr. COCHRAN. I have no questions, Mr. Examiner, to ask this witness, but he is on the stand primarily to answer questions that will satisfy Mr. Wiprud with reference to some data that he wanted to get, and this information has been secured by phone and Mr. Wiprud has agreed to take it, as I understand it.

Mr. WIPRUD. Yes, sir; Mr. Examiner. I would like to ask a few questions of this witness.

Cross-examination by Mr. WIPRUD:

Q. Mr. Sutton, Exhibit B-6 in Form B. M. C. 45 in Docket M. C.-F-1612 shows the—

Mr. SULLIVAN. Excuse me, sir; Mr. Wiprud. Are you reading from an application, copy of the application?

274 Mr. WIPRUD. Yes, sir.

Mr. SULLIVAN. Thank you. And what page—what exhibit was it?

Mr. WIPRUD. It is Exhibit B-6.

Mr. SULLIVAN. Thank you very much.

By Mr. WIPRUD:

Q. Shows the annual sales of the Brown Equipment and Manufacturing Company for the years 1939, 1940, and 1941. Can you state for the record the amount of those sales—and I now show the exhibit to you—that were made by the Brown Company direct to the Horton Motor Lines?

A. It isn't necessary for me to look at the exhibit, Mr. Wiprud. That has been prepared by the auditors. But I can give you the facts with regard to the revenue or the sales, rather, of Brown Equipment and Manufacturing Company for the fiscal year ended April 30, 1941, and then give you the assurance that those percentages were practically the same for the two preceding years. I believe you have said that that would be satisfactory.

Q. Yes.

A. For the fiscal year ended April 30, 1941, the sales to other firms than Horton were a very small percentage, 2.093 percent, two and ninety-three thousandths percent. The remainder of the sales were to Horton Motor Lines, Inc., and in those two preceding years, which constitute the entire history of Brown, those percentages would vary only a small amount if any.



275 Q. Mr. Sutton, are you familiar with the provisions of the Clayton Act, Section 10?

A. I don't recognize the section exactly, but I know what you are referring to.

Q. That section forbids the making of contracts by a carrier for supplies in amount in excess of \$50,000, one year, with another company having an attorney, officer, director, or agent, also, serving in such capacity except through competitive bidding. That, generally, is the provision.

A. Yes; I am familiar with the provision.

Q. What steps have you taken to comply with that?

A. We have complied fully with that. The requirements of Horton from Brown have exceeded the \$50,000 stated and we have followed the Commission's requirements and regulations in that instance, having opened up competitive bids, advertising properly in the newspapers, made available to any bidders any information they might like to have and would need, such as specifications, lists, et cetera. Those files have been completed and are now on file with the Interstate Commerce Commission.

Q. The records of the Commission, Mr. Sutton, disclose that such information was filed with the Commission as to certain contracts on December 20-26, 1939?

A. Yes.

276 Q. And aside from that, there is nothing in the records to indicate that for the period that you have described; that is, for the 3-year period that any other effort was made to comply with Section 10 of the Clayton Act?

A. That is not correct because the same thing was done for the year 1940.

Mr. SULLIVAN. Excuse me; Mr. Wiprud. I took occasion this morning to examine the record, and I find for the year 1940 there are similar filings with the Commission. It is contained right in the Commission's files.

Exam. BAKER. The record will speak for itself.

Mr. WIPRUD. The record will have to speak for itself.

By Mr. WIPRUD:

Q. What have you to say for the year 1939?

A. The sales from Brown to Horton in that period were not sufficient. I don't think they exceeded the \$50,000 involved. Brown commenced its operations in May of 1938. I think that is correct.

Q. And what was the volume of business during that year, for the remainder of the calendar year?

A. I cannot tell you not, but as I remember it was below the required amount.

Q. Will you supply the record with that?

A. I haven't it here with me. I presume I could supply it.

Q. Just to have the record complete.

A. Yes; I could do that.

Mr. WIPRUD. That is all I have, Mr. Examiner.

277 Exam. BAKER. Any further questions of this witness?

Witness excused.

(Witness excused.)

Mr. JOSELOFF. May we have a short recess, Mr. Examiner?

Exam. BAKER. How long do you want?

Mr. JOSELOFF. We are looking around for Mr. Lawson to testify, as you requested, and he just stepped out. We want to have an opportunity to locate him.

Exam. BAKER. Take a ten minute recess.

(Whereupon a short recess was taken.)

Exam. BAKER. Come to order, please. Mr. Wiprud, I understand you wanted to ask Mr. Sutton one or two more questions.

Mr. WIPRUD. Yes; if you please, Mr. Examiner.

J. A. SUTTON resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. WIPRUD:

Q. Mr. Sutton, let us see if we understand each other. According to Exhibit B-6 of Form B. M. C. 45, the annual sales of the Brown Equipment and Manufacturing Company, Inc., was, for the year ended December 31, 1941, \$914,018.80?

A. I am familiar—

Exam. BAKER. Is that 1940?

Mr. WIPRUD. \$914,018.80. I am reading from the exhibit, Mr. Sutton.

278 The WITNESS. I don't have the exhibit before me here. I don't know what period it covers. What is the exhibit again?

By Mr. WIPRUD:

Q. Exhibit B-6, Form B. M. C. 45.

A. Let us see. This is the carrier companies. Yes; that appears to be correct. I did not prepare this exhibit. That is the way I read it.

Q. And for the year ended December 31, 1940, the figure is \$856,517.03?

A. That is correct.

Q. And for the year ended December 31, 1939, the figure is \$169,402.42?

A. That is right.

Q. Now, as I understand your testimony, of those amounts approximately 98 percent constitutes sales from the Brown Company to the Horton Company?

A. That would be correct, yes.

Q. Now, what effort was made to comply with the provisions of the Clayton Act, other than that made in December 1939?

A. In December, 19— and December 1940 also.

Q. December, 1940?

A. Yes; that is right.

Q. No effort was made to comply with the Clayton Act for the year 1939?

A. Not so far as I remember, that is correct.

Mr. WIPRUD. That is all.

279 The WITNESS. As I remember, attention was called to this by counsel at whatever time we filed our first report with the Commission. If we did not file it prior to that time, it was probably in violation.

Mr. WIPRUD. That is all, Mr. Examiner.

Mr. COCHRAN. I didn't understand that exactly.

By Mr. COCHRAN:

Q. Is it a fact, or is it not that when Brown Manufacturing & Equipment Company first began to do business that you sent out these advertisements and bids of the first purchase over \$50,000 or more?

A. As I remember it, Mr. Cochran, it was the first time which we sent out those bids, was in December 1939; I think that is correct.

Q. When did it begin to do business?

A. It began to do business in May of 1938. Now, that is my remembrance. It is entirely possible that there may be an earlier report, but I think not.

Mr. WIPRUD. That is all.

Exam. BAKER. Witness excused,

(Witness excused.)

Mr. COCHRAN. Mr. Lawson.

J. D. LAWSON, being first duly sworn, testified as follows:

Direct examination by Mr. COCHRAN:

Q. State your name, place of residence?

280 A. J. D. Lawson, 1901 Lombardy Circle, Charlotte, North Carolina.

Q. Are you connected with Horton Motor Lines?

A. Yes, sir; I am.

Q. In what capacity?

A. I am a director of the company in charge of commerce matters.

Q. How long have you been employed as such?

A. Since May 1936. I have not been a director that long, sir. I have been with the company since May 1936.

Q. Mr. Lawson, have you prepared an exhibit showing competition of competitive motor lines operating over the routes duplicated by Transportation, Horton Motor Lines, and Barnwell Brothers Company?

A. Yes; and including Southeastern.

Q. That is right; I forgot—failed to mention Southeastern.

A. The exhibit that I have prepared reflects the principal motor common carriers—

Q. Before you go into that, let us identify it. You have the exhibit before you?

A. Yes, sir; I have a copy of it.

Exam. BAKER. The exhibit described will be identified as Applicant's Exhibit No. 2.

(Exhibit No. 2, Witness Lawson, marked for identification.)

Q. All right. Mr. Lawson, go ahead and describe the exhibit and make such comments as you will, make it clear to all parties, the Examiner and all listeners of this conference, just what it means.

A. This exhibit—

Mr. COCHRAN. Anybody want copies of this?

A. (Continuing.) This exhibit was prepared to reflect the principal motor common carriers operating in whole or in part within that territory embraced in the application here under consideration where there is a duplication of operating—strike that—of operations by two or more carriers parties to this application. The carriers reflected in this exhibit are carriers about which I have personal knowledge as to a considerable part of their operations and the territories they serve. The second page on which is listed 35 carriers shows what we call and are generally termed east-south motor lines, that is, carriers operating between points north of the Potomac River, on the one hand, and parties in the southeastern part of the United States, on the other hand. The second page, on which are listed 18 carriers reflects motor common carriers operating between points wholly in the southeastern part of the United States.

Q. Are those numbered 36 to 53, inclusive?

A. That is correct; and I should explain that the odd number came about in this manner: Out of the list of several hundred carriers in the territory being considered I selected 50 of the more substantial carriers about which I had some knowl-

edge as to their operations. After that list was compiled I recalled three additional carriers which I had not included. Those were the Thurston Motor Lines, a carrier operating in North Carolina and Virginia and the Fleming Transfer, which is the successor to the Phillip Greenberg operation between Richmond and Danville, Virginia, as well as other points. They operate a regular route service between those two points, and then the third is the Karl Lenker operation from Richmond, Virginia, and points in that vicinity southward into the Carolina—the Piedmont area of the Carolinas. The third page of the exhibit shows the principal points known to me to be served by these carriers. I selected the principal points along the routes of the Associated Transport Carriers in the southern area and have here reflected whether or not the—one or more of the 53 lines named in the exhibit serves those points or any of them. For example, the Akers Motor Lines, the first carrier on that list, is shown as serving certain points along the—what might be termed the main route operations of Horton and Barnwell between New York City and Atlanta, Georgia. Now, I have omitted Richmond, Virginia, or any reference to a service at Richmond, Virginia, because I do not know that that particular carrier serves that town. However, I do know that the carrier operates through there and it is a holder of a certificate with certain restrictions, and I—I believe I recall correctly now that it is not permitted to serve Richmond northward; that is, I mean by that picking up traffic in Richmond and moving it to northern points. I have included in this list the cities of New York and Philadelphia as well as 20 other points, beginning with Baltimore, Md., and thence progressing southward to Atlanta, Ga. I began with Baltimore, Md., because that is generally understood to be the breaking point in the characterization of an east-south operator. There are some east-south carriers, however, that operate only to Baltimore from the South. For one is No. 9, the Colonial Motor Freight Line. Its operation terminates at Baltimore on the north and extends to High Point, N.-C., on the south as to its regular route operation. However, it covers a vast territory in the Piedmont section of North Carolina.

Now, the southern carriers about which I just spoke are shown at the bottom of this page and there has been reflected the information as to whether or not the carriers, according to my knowledge, serve the several points. Some points opposite—some points have been indicated with the letter "X," suffixed by an asterisk, which means that I do not personally know that the carrier serves the point concerned, but that such carrier does hold a certificate from the Interstate Commerce Commission permitting it to do so.



The fourth page, or the map attached to the exhibit, is a segment of the map included in the application, and shown over on  
284 the easel reflecting the duplicating operations of the four carriers here concerned in the southern territory. Now, with respect to the operation between Roanoke, Va., and Winchester, Va., I should make this observation: That Horton has been shown as operating over that route and into Winchester, Va. That is true. Horton operates over that route, but it hasn't any authority to serve points along the route until it reaches Winchester, and the reference to that carrier has been inserted here in order to avoid any confusion in a consideration of the map in this exhibit with the one in the application and with the operating authority as it has been granted or approved by the Commission for that carrier.

Exam. BAKER. Is Horton Motor Lines authorized to serve Roanoke?

The WITNESS. No, sir; it is not. It does not operate in there, it does not operate through there, and it does not have any authority to serve the point. It will show, Mr. Examiner, by the map in the application that Horton's operating route extends from Alta Vista, which is its most—that isn't quite correct. Which is a point north of Danville. The operating—its operating route then extends from there to Lynchburg, Va., where it crosses the mountain range and traverses U. S. Highway 11 through the Shenandoah Valley to Winchester.

Exam. BAKER. What is the last point it can serve on that route, Lynchburg or Lexington or—

285 The WITNESS. No; the last point, progressing north from Greensboro, N. C., would be Alta Vista, Va., until it reaches Winchester. Winchester is the most northern point in Virginia that Horton could serve, but there isn't any intermediate point to Winchester and Alta Vista. Neither does it have the authority to serve any points between Alta Vista and Washington, D. C., over U. S. Highway 29. That is another through operating route, and the map in the application reflects that operation, that through highway, but if the application here is approved and a unification effected there would not be any diminution of the service over that particular highway as is the case over the highway to Winchester, so far as Horton is concerned. There is only one operator now in this matter that has the authority to serve points between Alta Vista and Washington over U. S. Highway 29, and in the event of unification it would still be that same carrier.

Q. As I understand it, the map you have here, Mr. Lawson, shows points and routes wherever there is a duplication of rights

as between Transportation and/or Horton and/or Southeastern and/or Barnwell?

A. That is correct. That is south of Baltimore, Md.

Q. That is right.

A. I haven't projected this on to New York to show any duplication of operating authorities or actual operations by any  
286 of those carriers north of Baltimore to New York, and so forth. I do know, however, that there are a large number of motor common carriers operating between Baltimore and New York as well as other eastern points in competition with our own company as well as Barnwell and any other company involved in this proceeding.

Mr. COCHRAN. Mr. Examiner, we would like to introduce this exhibit in evidence as Applicant's Exhibit No. 2.

The WITNESS. Mr. Cochran, I should like to add to the testimony which I have given with respect to this, that these carriers are by no means all of the operators known to me to be operating between the East and the South. The ones that I have shown here are carriers that operate more or less regularly and over the routes served by our line; and are —

By Mr. COCHRAN:

Q. You say "our line"—

A. I am referring to Horton, and it also includes Barnwell Brothers and Transportation. Neither does the—neither does the exhibit reflect the full operations of these carriers. This is just a segment of their operation, generally speaking, as well as that of the carriers involved in this application, for example, the Howard Hall Company and Jack Cole Company, carriers Nos. 15 and 16, have their main headquarters in Birmingham, Ala., and operate out of that point. They operate up to New York City, to my personal knowledge, and elsewhere. They operate into the southeastern part of the country, and so forth, but this reflects  
287 purely the competition that these carriers provide us. Now, there are others, the R. D. Fowler Motor Lines, Wayne Motor Lines, Dial Brothers, G. & M. Transfer Company, Reliable Trucking Company, Kelly Motor Lines, Old Hickory Freight Line, Billings Transfer, Northeastern Lines, S. & T. Trucking Company, Bassett Furniture Trucking Corporation, and the Davis Motor Lines, that are also operating between the East and the South. Mr. Examiner, I shouldn't mislead in my statement with respect to some of the latter carriers. They are carriers claiming to have been irregular route operators, and in the case of the Bassett Furniture Trucking Corporation, for example, operating out of Bassett, Va., and the Martinsville area, I think I recall correctly that

the Commission found that they were entitled to continue to transport new furniture out of that section of Virginia to quite a large territory in the North and Northeast, and on the return general commodities to a large part of the southwestern part of Virginia, including Danville, Martinsville, and points in that area. It may also include a part of North Carolina, but I am not certain about that at the moment, but the Old Hickory Motor Freight Line likewise has a certificate providing for the transportation of new furniture and other specified commodities northbound and general commodities southward. The other carriers reflected in the exhibit, however, have only the usual exceptions in the class of traffic that they will transport either in their certificates or  
 288 their claims to operating authorities now pending before the Commission.

Q. Mr. Lawson, do you know anything about the numbers of pieces of equipment that these competing lines have?

A. Oh, yes. I know of only one source of that information, and proceeded to examine the records of the Interstate Commerce Commission here in Washington respecting the sworn statements of these various carriers in their form B.M.C. 71 applications for Interstate Commerce Commission identification plates wherein they are required by the Commission to set forth the number of units being operated at the time the application is made. I examined 48 of the applications of these carriers, five of the files not being readily available.

Q. Are you speaking of 48 of the 53 listed?

A. Forty-eight of the fifty-three carriers; yes, sir. Five of those files not being available here in the offices at the time I made this investigation last week, and computed the following figures: One thousand and thirty-two straight trucks, 1,591 tractors, 1,681 semitrailers, or a total of 4,304 units. The carriers for which I could not procure this information were Central Motor Lines, Incorporated; Jack Cole Company, Incorporated; Transport Corporation of Virginia; New South—those three carriers are east-south operators. The New South Express Lines, Incorporated; and the Blizzard Motor Express Line; those two carriers being strictly southern—or southeastern operators, short line carriers in the South.

289 Q. Are those companies whose records were not available, are they substantial operators?

A. Well, yes. I should say that it would be my estimate, judging from what I know about the operations, that possibly there would be between 50 and 75 additional complete freight-carrying units.

Q. What is the date of the record from which you secured the information showing the number of trucking units?

A. Various dates, Mr. Cochran. There isn't anything uniform with respect to the application for identification plates, and some of these—some of these applications are recent, and by that I mean within the last couple of months. Others—I believe there are one or two of these short-line operators that have filed only one application with the Commission, and that was dated some time subsequent to the order requiring the motor carriers to display the tags in 1937, I believe it is, in the fall some time. That order became effective, and there were one or two of the applications that were dated back to that time.

Q. The information you have there and the figures you have read into the record are somewhat out of date, then, probably?

A. No, I don't think so—

Q. All right, then.

A. —for this reason: That I have found very few of these carriers on the highway, and I might explain by saying  
290 that I do a lot of my traveling by an automobile between terminals on our own line, and it is part of my purpose to observe the observations of our competitors, and I find very few of the vehicles of these known operators—I am not talking about the fruits and vegetable transporters, but of these carriers who are more substantial operators in the transportation over more regular routes without the interstate identification plates being displayed thereon.

Now, the statements that I examined were sworn statements of the various applicants, and I think that in the case—I believe that it would be found in the case of an older application that the carrier might have disposed of a piece of equipment and merely used the plate for a new piece that he put on. I think that the information is substantially correct. There may have been some additions within recent months by some of these carriers and, of course, too, it is a known fact that some of the carriers do operate leased equipment. That equipment may be operating over the—what is generally termed the trip lease arrangements without interstate tags on them. But I am only considering—in the compilation of these figures, I am only considering those figures that were revealed in the sworn applications of these various carriers for tags.

Q. On page 4 of your exhibit, Mr. Lawson, opposite the names of the 53 carriers there listed and under the names of some 22 towns you have "X's." Each of those indicate that the  
291 company named operates into and through the town under which the "X" appears?

A. That is correct. That is correct, sir.

Q. These 22 towns that you have selected for the purpose of this exhibit are located with respect to Horton, Barnwell, Transportation, and Southeastern's operations in what territory, generally speaking?

A. Well—

Q. Are they the important points along the routes where there is duplication or—

A. Yes, sir; they are the most important points. They are all of the important points, but they are the most important centers from a traffic standpoint, at least in my opinion, from what I know about the territory between Baltimore, Md., and Atlanta, Ga. There are others, however, that are not reflected here, and they are generally in the same area. For example, I think one of the preceding witnesses mentioned Gainesville, Ga. That is south of Greenville, S. C., and generally in the Athens, Ga., territory. That is not reflected here because it is a point served only by Transportation of the carriers involved in this application, while Horton Motor Lines operates through that city, but—

Q. Horton Motor Lines operate through Gainesville?

A. Yes, sir; it has operating rights—it has operating rights through Gainesville, but no authority to serve the point.

292 Q. I see.

A. However, the map in the application shows an operation by Horton through there, and it does give the impression that there is duplicating right to operate to that point. That is only a through route, so far as Horton is concerned.

Q. Horton, then, as a matter of fact, has no right to serve the town of Gainesville?

A. That is right; and any unification of the carriers—that is, of Horton and Transportation—would not result in any less service to that point.

Q. Neither has Barnwell nor Southeastern the right to serve it?

A. No; that point is entirely out of the territory served by those two carriers.

Q. Are there any other other comments by way of explanation, Mr. Lawson, that you think you should make with reference to this exhibit?

A. One comes to mind. That is with respect to the points—the page showing these carriers and the points, the principal points, served by them. I do know that not only have these carriers the through operations or the operations reflected on this paper, but also they have joint arrangements among themselves—not all of them. I can't say as to that. But I will illustrate, for example, by saying that Brooks Transportation operates from New



293     York City to Greensboro and Winston-Salem, N. C. At that point they have interchange facilities under through rate arrangements with the southern carriers, or some of them, for points beyond going down into the deep South. I mean Georgia and Alabama. The Great Southern Trucking Corporation operating from Greensboro southward as far as Florida and into Tennessee and Alabama and that section are in a position to interchange traffic with carriers coming into Greensboro under through rate arrangements. That combination of facilities is available generally between most of these carriers that I have set out on this document, and I know that they do perform those services, or most of them do anyhow. The American Trucking Corporation, for one. Next is the A. A. A. Highway; Lewis & Holmes, and so forth, down the list of southern carriers are what are generally called short-line operators in the southern territory feeding traffic to many of the through lines such as Akers and Horton, Harris, and so forth, as well as Barnwell, too. So that the exhibit by reflecting east-south operators, in the first instance, is not intended to indicate that they are the only through rates composed of the substantial operators between the extreme points of New York, on the one hand, and Atlanta, Ga., on the other, as reflected here. These southern carriers can be used and are used in the transportation of traffic in joint arrangements. That is true also of carriers operating into Richmond, Va., from the eastern section where the interchange is made with carriers beyond into the Carolinas and Georgia, and so forth.

294     Q. Is the W. H. Tomkins Company—do you know anything about that company?

A. Yes, sir; they are located in Nashville, Tenn. They operate quite a far-flung service throughout the southeastern part of the United States, going as far as Florida. They have been operating a regular route operation between Greensboro, N. C., on the one hand, and Nashville, Tenn., on the other, and sought authority from this Commission to continue such an operation in the transportation of traffic through joint arrangements between Baltimore, for example, and by way of illustration, and Atlanta, Ga.

Q. How about Hoover Motor Company, Hoover Motor Express Company?

A. That is a Tennessee carrier; and they operate a little bit out of the territory generally served by our companies. I say "our companies." I mean Horton and Barnwell and Transportation, although there is competition with Transportation in the eastern Tennessee section and—I don't know so much about them.

Q. Any competition with Southeastern?

A. Oh, yes. Yes. They compete with Southeastern over in the Nashville, Knoxville, and Bristol area, in that section of Tennessee.

Q. Do they handle east-south freight?

295 A. Yes; to the best of my knowledge, they do. Not directly, of course, but through joint arrangements with other carriers.

Q. Do you know which one of the carriers would you name—which carrier would you name operating in the Nashville area as being the most substantial of the large ones, if you know, if you have such information?

A. Perhaps I don't understand your question.

Q. What company operating—what motor carrier operating in the Nashville area would you name as the largest of the group that does operate in that territory?

A. The group, you mean, serving the east-south, or serving the South, or what area do you have in mind, Mr. Cochran?

Q. Operating in the Nashville area. I don't care which way they go, whether they go East or West.

A. There are carriers operating out of that area west toward Memphis that I don't have much information about. As to the carriers which I have discussed—I have not examined the statistics on the other, but the Super Service is a substantial operation as well as Southeastern.

Q. Mr. Lawson, have you any knowledge of the tonnage either in pounds, tons, or however it is so calculated, carrier by Horton Motor Lines from Atlanta to New York per annum? Have you that data?

A. No; I don't have it. That information is given to my department periodically, Mr. Cochran, but I don't make  
-296 any attempts to keep it in my mind.

Q. Of course, you haven't any such information or reference to Southeastern?

A. I haven't anything, any data available here, as to that—

Q. You haven't that data available here as to Southeastern or Transportation or Horton?

A. No; that is confidential so far as those lines are concerned, and I haven't access to it, sir; nor have I it with respect to these other carriers. However, I do know that the operations here are substantial.

Q. Is that information available, readily available, the amount of freight transported by Horton between different points along its lines? Do you know whether that is readily available, or whether it is not available?

A. Well, as to strategic points, it is; there are certain traffic statistics that are available to the management.

Q. I understand. You don't know whether it is broken down as between Charlotte and Richmond, or as between Richmond and Baltimore?

A. Oh, that isn't—no; that isn't available in any detail of that sort.

Q. Yes, sir.

A. However, there are times when such information is necessary in the prosecution of a rate case, for example, before the Commission when it is necessary for us to assemble that  
297 data through the tedious process of going back through the records, but there is no effort made to select that information periodically.

Q. Are there any other statements that you can think of you should make with reference to this exhibit?

A. I believe that the Examiner made some mention of Horton Motor Lines' operation, or operating authority, when Mr. Horton was on the stand; and I believe that—I think I am safe in saying that I was delegated to answer it.

Q. I suppose you go into that matter of the scope of Horton Motor Lines' operations?

A. Horton operates from Rome, Ga., on the South, through Atlanta, Ga., Athens, Greenville, Spartansburg, Charlotte, Greensboro, thence Durham and Richmond into Washington, Baltimore, Philadelphia, and New York, and from Greensboro through Lexington—through Lynchburg and the Shenandoah Valley to Winchester, Cumberland, Md., and into Pittsburgh; between Baltimore and Pittsburgh via Cumberland, Md., and between Baltimore and Scranton, Pa., via Harrisburg and Wilkes-Barre; and between Philadelphia, on the one hand, and Allentown and Easton, on the other. Those are the principal routes of the company. That does not include, of course, the terminal areas around the several main terminal points that we have on our line. The application for authority under the grandfather clause of  
298 section 206-A of the Motor Carrier Act has been acted upon by the Commission with the exception of an operation between—the claimed rights between Baltimore and Pittsburgh; and the application has been granted except as to that part of the operation, and they protest against the Baltimore-Pittsburgh operation came about through a predecessor of Horton's operating from Cumberland to Pittsburgh filing an application where it claimed the same rights. It sold to Horton. Because of several applications having been filed in a name similar to that of the predecessor, that is, in the name of Twigg, in and around the Cumberland area, it was some time before we detected the claim of this particular individual and were able to act against it.

After a formal hearing of the matter before the Interstate Commerce Commission, that is, the application of the predecessor by the Commission here, we went into the courts in Maryland, and sought injunctive relief against the operation which we obtained eventually. The application of the predecessor was then reopened and the Commission was informed of the relief we had obtained in the court in Maryland, and just recently it—strike the “it.” And just recently the Examiner’s proposed report came down denying the claim to authority over that section of the operation which our company, the Horton Company, now operates and claims authority. That very materially alleviates the protest against the claim between Baltimore and Pittsburgh.

299 Mr. COCHRAN. Mr. Examiner, we would like to introduce this exhibit as No. 2, and offer it in evidence in this case.

Exam. BAKER. It may be preferable to wait until after cross-examination.

Mr. COCHRAN. Cross-examination? That is all the questions.

Exam. BAKER. Any cross-examination?

Mr. WIPRUD. Yes, Mr. Examiner; I would like to ask a few questions of the witness.

Cross-examination by Mr. WIPRUD:

Q. Mr. Lawson, I take it the purpose of this Exhibit No. 2 is to demonstrate the amount of competition that will remain, assuming that this unification is approved?

A. No, sir; that is not quite exactly right. The purpose of that exhibit is to demonstrate that there will be some competition if this application is approved, sir. It does not demonstrate all of it, as I have stated before, and—I know that it is not all of the operations. It doesn’t reflect all of the operations in the territory which attention was given to, and which this exhibit reflects. This is the substantial competition, sir.

Q. Are these all class I carriers?

A. Practically every one. There may be a few of those southern carriers, and even at that there are very few of them, for example, carrier No. 45, I believe that that is not a class I  
300 carrier, but that operates—as far as this application is concerned, that carrier operates only between Greensboro and Winston-Salem, a matter of about 20 miles. The rest of the carriers, I believe that if my recollection is correct, they are class I operators. I endeavored to confine my exhibit and survey here to class I operators, sir.

Q. Mr. Lawson, in the event that the Commission approves the pending application of Associated Transport, Inc., will there be any other carrier of a similar size in this territory?

A. The size of the Associated Transport, Inc.?

Q. That is right.

A. No; I don't think there will be, not the size of the Associated Transport.

Q. Then, insofar as Associated Transport is concerned, there will be no competitor of equal size?

A. Well, not if they remain static. However, there are applications pending before the Commission now for consolidations and leases, and so forth, of some of these carriers that I have reflected here. So that I don't know whether there is going to be a combination of any of these 35. If there was a combination of these 35 carriers permitted by the Commission it would be larger than Transport, including all of its operations, assuming Associated didn't grow.

Q. But, coming back to my question, if this application is approved there will be no other operation of equal size  
301 throughout this territory?

A. No; I don't think so.

Q. Then, so far as the carriers you have listed in Exhibit No. 2 are concerned, they are competitors, or they would be competitors, rather, only over certain segments of the proposed operation of Associated Transport, Incorporated?

A. Let us see if I understand your question correctly. That the first carrier—I will answer you this way, sir, by saying that the first carrier on the list, while I have shown an operation from New York to Atlanta, Ga., he actually operates from Boston, Mass., in the transportation of general commodities. I didn't attempt to go up into that part of the Associated Transport territory. Now, carrier No. 12, and as well as carrier No. 19, is operating into the New England territory. Now, when you say "over the territory" there isn't any single carrier that would operate—I don't believe there is a single carrier here that would operate from Boston, Mass., to New Orleans, La., on a direct single line operation. However, carrier No. 26, Roadway Express, Incorporated, operates from New York to Texas, and they cover the Southeastern territory just about as much as Horton and Barnwell. They may not operate as much equipment down there, but they have—they have at one time or another recently, within the recent past, informed the Commission under oath that they operate some 500 pieces of equipment themselves.

302 Q. Well, now, Mr. Lawson, it is proposed that Associated Transport operate between New Orleans and New York as a single line operator.

A. Yes, sir.

Q. Assuming that the application is approved and such operation is instituted, what competition, if any, will Associated Transport have in the business between New Orleans and New York?



A. Oh, they would have quite a bit of competition, sir. There are short-line carriers operating from such points as Montgomery, Ala., into the Deep South and—out of Atlanta, Ga., for example, into the southwestern part of the southeastern section of the country, and, as I said before, those carriers join in through-through rate joint arrangements with the carriers from Atlanta, Ga., for example, operating through to New York and Boston, so that—

Q. Let us have an illustration, now, of the competition that will exist with Associated Transport, Inc., between New Orleans and New York, assuming that this transaction is approved.

A. Well, in the first place, my exhibit, sir, doesn't go to New Orleans, and I made no investigation—or I did not set out here any information about operations south of Atlanta, Ga., because, in the event of unification, there will still exist only one  
303 carrier, and the only carrier that is involved in this application, so far as Associated Transport is concerned. There isn't any lessening of service there, so that I would say this: That, as it is true now, there would be Associated—there very easily could be Associated Transport from Atlanta, Ga., to New Orleans and any one of these carriers from New York to Atlanta, Ga. Transportation, Incorporated, interchanges traffic at that point and at points north thereof.

Q. One of the substantial benefits claimed for this proposed unification is the elimination of interchange, is it not?

A. That is correct, as between companies; that is true, yes.

Q. And if it were necessary for a combination of competing lines to interchange several times between New Orleans and New York that would not put them in a competitive position with a line that would not have to interchange, would it?

A. Well, that would depend on how they worked out their interchange. If there was an actual physical handling of all of the traffic that might not work out so well. They are interchanging the traffic—I cannot say that they are interchanging under the interchange of equipment arrangement now at Atlanta, but they do in other places. There is an interchange of traffic over the route which you—of which you speak at the present time, and it is impossible to get the traffic, as far as motor lines is concerned, through any other way.

Q. Did you hear Mr. Horton's testimony to the effect that through this unification and the elimination of interchange  
304 that some 36 hours would be saved in transporting goods from the northern area to the southern part of the United States?

A. Yes; I heard that, sir.

Q. And that, as I understand it, is to be accomplished primarily through the elimination of interchange?

A. I think that is true, too.

Q. That is, interchange that exists at the present time?

A. That is right.

Q. If that is the fact, then, those carriers that are compelled to resort to interchange would be at a disadvantage to that extent with Associated Transport?

A. Well, I don't know quite how to answer you on that, sir. I will say this: That if it is a matter of permitting a carrier to handle the traffic through and do it in competition with water lines and lower rates via the coastwise and Gulf services or deprive the public of the through motor-carrier service. It is a toss-up whether the consideration should be given to the other motor carriers. If the other motor carriers don't see fit to adjust their services to the desires and needs of the public, that is one thing. I—I will say this to you, sir: That it is entirely possible that right today our company may have a much more advantageous interchange arrangement and through traffic set-up into New Orleans or any other point in the Southeast than would some other carrier probably not quite so much concerned with giving a better service to the public.

305 It has always been our attempt to get the traffic through as fast as possible, deliver it before it was shipped, if it was possible to do so. That is the service our people would like to have. We try to coordinate our schedules with our connecting carriers. We endeavor to work all of those factors and take into consideration anything possible that will make such a service available to the public, despite perhaps a request for one cent or two cents more on the division of the traffic by the connecting carrier, and if some other competitor of ours doesn't see fit to pay the extra cent for the faster service and coordination of schedules. I don't know what one could do about it.

Q. Well, in order to avoid effective competition to Associated Transport it boils itself down to this, does it not, Mr. Lawson: That another large combination would have to be effected somewhat along the lines now proposed by Associated Transport?

A. No, sir.

Q. Well, how else could they meet the increased—the increased—or reduction in time schedule that you claim for this proposed unification?

A. Well, Akers Motor Lines, for example, the first carrier on the list, operating directly from New York City to Atlanta, Ga., could, in my opinion—I admit I am not an operating man, but I have tried to observe operating conditions in the motor

306 game. It is very appealing to me. In my opinion they could interchange their equipment with a carrier going beyond and in effect give the same kind of service. Maybe they don't seem to—

Q: In other words, it is possible to interchange equipment between independent carriers?

A: Well—surely, if the equipment is set up—if the equipment is of such character that can be interchanged. I see it in several places. I know it is being done into New England by certain carriers, and I see it in other places. As a matter of fact, our company has interchanged with some of the short lines on one or two occasions because of the specific request by the shippers that they wanted their traffic to move through, and we made arrangements. It isn't—it is not entirely the most satisfactory, especially for a fleet of ours where we have to give the equipment to the other operator. By that I mean, where the other carrier depends on us for the equipment and doesn't have anything to put in a schedule to coordinate with our equipment it makes it kind of unbalanced, but the only place that we ever operated in such a manner was over a couple of little routes in North Carolina, about 20 miles in length, I guess, or maybe one was 30 miles, but it didn't bother us, but they could interchange equipment, I guess, if they really had a desire to do it, or necessity for it.

307 Q: Well, then, the saving of time could be effected by the interchange of equipment between carriers?

A: Yes. Akers Motor Lines—I stick to Akers because it happens to be the No. 1 carrier on our exhibit—but I believe Akers Motor Line at the present time is running traffic through from New England to North Carolina and Georgia as fast as our company can, and we have lost business to that carrier as well as some of the others named here because he has performed faster service. We suffer the same thing on the north end that you are talking about on the south end.

Q: If Akers could do it, Horton could do it, couldn't they?

A: I don't understand what you refer to? Are we talking about the New England area or the Atlanta-Mobile area, and so forth?

Q: What is the southern terminus of Akers? Is that Atlanta?

A: Well, so far as I know it is. I believe that they go beyond that, though, under certain conditions.

Q: Horton also operates to Atlanta, does he not?

A: That is correct; that is our southernmost terminus.

Q: Then, so far as the interchange that you propose for Akers is concerned, would you say it is 36 hours? Horton can do the same thing?

A: Well, from New York through to Atlanta, Ga.?

Q. And through that point of interchange to points south?

A. Well, there is a question there. Our company—our company doesn't have the conventional type of equipment. As you  
308 undoubtedly have heard the testimony, the equipment is built by our subsidiary and built to certain specifications. The fleet isn't of such character as to readily lend itself to the interchange arrangement without the other lines revising their tractor equipment. Now, Akers, for example, has the conventional type of equipment built, I think, some of it by Fruehauf, and the like. I don't believe they would have so much difficulty in interchanging their equipment as we might have.

Q. Well, assuming that that difficulty were overcome, there would be no difference in the problem of interchange, Horton as compared with Akers; would there?

A. I don't know. I might say that it would appear to me not to be, but you would have to understand something about the business of the companies and the manner in which those businesses are conducted. I mean by that our prime object is to get the traffic through. We operate on specified highway routes. We have schedules not necessarily advertised to the public but operating for our own public in order that we might anticipate the arrival and delivery of traffic at the different points.

Q. Well, Mr. Lawson—

A. I don't know whether the carriers beyond down there would coordinate in such a fashion as to make it possible to work it out. Of course, if everything were even and equal and the matter of  
309 interchange of equipment was the only thing and that were possible and there was complete agreement on the matter, I suppose one could do as well as the other except that—well, there are other factors entering into it. I think Akers operates sleeper cabs, and so forth, whereas we don't.

Q. If that were the fact, then there would be no need for unification in order to save that 36 hours; would there?

A. Yes; if there was as simple as all that I don't suppose there would be any need for unification, but it certainly would, in my opinion—the operation under one company—it is not only my opinion. I know from experience that we have had in the operation of our equipment in the matter of the short routes that I just mentioned awhile ago it is—it would make a much better operation and give a finer service to the public to have it operated under one—one company or one management. There is something a little more personal attached to the operation of your own equipment over the highway than operating the other fellow's; you know.

Q. Well, speaking of equipment, Mr. Lawson, what would be the equipment which the proposed merged companies would have, assuming that the application is approved?

A. You mean the total amount of equipment?

Q. Yes. You give equipment for these carriers.

A. According to the Exhibit E attached to the application—I believe that is a schedule of the equipment owned and leased by the companies here—I made a computation a few moments ago of the equipment here; and I arrived at these figures: 1,765 complete units.

Q. What do you mean by “complete units”?

A. Well, considering a tractor and a semi-trailer as one unit.

Q. Is that the way you figure the other 4,000?

A. No; I gave you the individual figures on that.

Q. Can you give us the individual figures on Associated Transport?

A. Well, maybe I had better do that under advisement because I made a little computation here that just didn't seem quite right to me.

Exam. BAKER. Doesn't the record speak for itself in that respect?

The WITNESS. I think so, with one exception, Mr. Examiner. I may be wrong at this particular point, but Exhibit E under Barnwell Brothers, Incorporated, shows 10 units leased and under the Barnwell Warehouse & Brokerage Company, and it seems that that figure has been included again; so there would be a minor duplication in that respect, that is right, so that I just deducted the 10 units and made my computation from that for a total of—well, it is set out there. There are 3,162 owned plus 158 units under lease, or a total of 3,310. The first figure is 3,152, it should be.

Q. Is it not a fact, Mr. Lawson, that if this unification is approved that Associated Transport will have a monopoly of long haul transportation on the Atlantic Seaboard so far as motortruck operation is concerned?

A. Generally speaking, no.

Q. Well, what other individual line will be able to compete with it?

A. Well, I have named a number of them for you, sir, and my exhibit sets out quite a number that are doing a pretty good business right now of competing with the same units that are involved in this application.

Q. Well, are you prepared to state for the record what combination of carriers can compete with the unified lines between New Orleans and New York, the New England States?



A. I couldn't give you all of them; no, sir; but there is a substantial number of them; and then, too, I think that you should bear in mind that the traffic isn't all moved between New York and New Orleans. There is a vast amount of traffic moved over these lines that never sees New Orleans, never arrives at New Orleans or even originates there. Get into the Piedmont section of the Carolinas, the textile area down there with traffic moving in both directions, traffic moving out of the Alabama section. I think Mr. Clay testified about some traffic, textiles, moving out of there, and certainly Transportation is by no means the only carrier serving Lenoir. You have got Howard, Hall,

312 and Jack Cole, and other carriers coming right out of that area going to New York and the other eastern territory and hauling the traffic. As a matter of fact, Howard, Hall, and Jack Cole have taken traffic away from Horton Motor Lines within the recent past what we had enjoyed heretofore. It simply—I don't know; service apparently. It was their through operation that took some of that business; there is not anything to prevent them from interchanging traffic to New Orleans. They go to Birmingham. It is one interchange. I don't see anything monopolistic in the arrangement at all. Maybe one or two little points where there would be a merger or a unification of Horton and Barnwell, or Horton and Transportation, but, considering the entire picture and the advantages to the shipping public in this area, I don't think there are any consequential—it does not go to make a monopoly.

Q. But you are not in a position to state the carriers that would afford effective competition to Horton and Associated Transport between New Orleans and New York?

A. Well, as I said, the traffic doesn't move between New Orleans and New York. That is not the bulk of the business. I could develop that information, but I would say this: That I have listed carriers here in my exhibit that will get you all the way from Boston, Mass., to Birmingham, Ala. That is true not into New Orleans, but, so far as the traffic is concerned, as far as the movement of commerce along the eastern seaboard, that

313 gives you a good picture of the denser section; and this isn't all of the motor carriers. I am not prepared to tell you what carriers would constitute a through route from New Orleans to New York, or Boston, Mass., and operate along the route of Associated Transport in the event of a unification here. But my knowledge of the territory, after having spent 5 years in—in the Southeast and in the East handling traffic matters and commerce matters for this company and examining records of competing carriers at formal hearings of their applications,

and so forth, I am confident that there won't be any lack of competition. We won't be able to sit back and get the business without working for it.

Mr. WIPRUD. That is all I have, Mr. Examiner.

Mr. SULLIVAN. May I ask one question?

By Mr. SULLIVAN:

Q. Mr. Lawson, does the Horton Company at the present time, by means of connection or interchange, haul any freight from New York City to New Orleans?

A. Oh, there might be a box now and then of something go down there. It is relatively small in amount.

Q. I mean if it did it would be not more than a few hundred pounds in the course of a year?

A. Not more than that because—well, if the—the traffic just doesn't move that way, Mr. Sullivan.

Q. All right. Now, then, is that the situation *situation* with respect to the Barnwell Company?

A. Oh, surely, definitely so.

314 Q. And do you know whether Southeastern pulls any traffic by interchange, or otherwise, between New York City and New Orleans?

A. Well, they would be in the same position that we are.

Q. As to Horton and Barnwell?

A. See, the business originates—the answer would be the same. There might be some little business, a few shipments or something like that, but in all my study of this traffic situation I don't find it—a great bulk of it going through.

Q. All right. Now, that would also be true of Transportation, the Transportation Company?

A. Oh, surely.

Q. Well, under those circumstances if there is any substantial bulk of traffic being handled between New York and New Orleans somebody other than those concerned here have got the monopoly of it at the present time; isn't that so?

A. Definitely so.

Q. So, if there is any substantial bulk and somebody else has got it at the present time, there is nothing involved in this merger or proposed merger, that is going to interfere with that; would it?

A. I don't see how it possibly could unless they quit.

Q. So, the most that would happen at the present time if this merger were approved would be to break up the monopoly that already exists; is that right?

315 A. It seems to me that is true.

Q. Counsel asked you if there were any motor carriers in the area—perhaps he meant in the southern area or perhaps he

meant all of the area involved in this unification—of a similar size. I don't know what he meant, but I ask you if the Greyhound System doesn't operate throughout the territory of either Horton and Barnwell, or throughout the rest of the territory up in the North; is that right?

A. Oh, yes. Yes.

Q. And their gross revenues are over three times the size of the gross revenue of this proposed unification?

A. Yes.

Q. In other words, some \$55,000,000 a year as opposed to \$20,000,000?

A. Yes, sir.

Mr. WIPRUD. Counsel seems to be testifying here. Is he sworn, Mr. Examiner?

Exam. BAKER. Mr. Sullivan, it would be preferable if you wouldn't lead the witness.

Mr. SULLIVAN. I am through now, so let him lead him.

The WITNESS. I do not know from my examination of the records that the revenues of the Greyhound Corporation is substantial.

Mr. WIPRUD. Is that material to this case?

Exam. BAKER. Well, it is on the record.

Mr. SULLIVAN. I suggest, Mr. Examiner, of course it is.  
316 The Greyhound Corporation is a substantial company. It is a class I motor carrier and from day to day or from month to month it comes in here and asks for rate increases and mergers; I think it is an excellent precedent for this merger except that part of its merger that might be considered monopolistic.

Exam. BAKER. Any further questions?

Mr. WIPRUD. May I ask the witness if he wants the record to show that there is only 200 pounds of freight that moves from New York to New Orleans over this line?

Mr. HORTON. He could easily show that there is none at all and be correct.

Mr. WIPRUD. How about the territory—

Exam. BAKER. Just a moment. Did the witness answer that question?

The WITNESS. No; I was going to.

Mr. WIPRUD. All right.

The WITNESS. I didn't say that there were only 200 pounds, sir. I said if there was any it was a very small, inconsequential amount at the present time, as far as I know. There may be 500 pounds. I doubt it, from New York to New Orleans over our route or over the route of Transportation or Southeastern or Barnwell.

Exam. BAKER. In order to clarify that matter, I might ask Mr. Horton, he has been sworn, to answer from where he is:

317 To your knowledge, does Horton Motor Lines move any traffic over its lines originating at New York and destined to New Orleans?

Mr. HORTON. We do not, sir.

Exam. BAKER. Very well.

By Mr. WIPRUD:

Q. Could you state, Mr. Lawson, for the record, the volume of traffic that moves over the lines of Transportation from Atlanta to New Orleans at the present time that originates north of Charlotte?

A. No; I couldn't, sir. You see, such information as that is personal company information and not available to me as a competitor. I don't believe they would let me have it.

Mr. HORTON. It is available to me, and if you don't mind I will answer the question.

The rate structures under which the companies operate level out over a distance of many, many miles and increase very, very small. They do not increase in proportion to the increase in distance, and it is not profitable to run a truck from New York to New Orleans under any system.

Mr. WIPRUD. I understand from Mr. Lawson that there are some trucks operating from New York to New Orleans.

Mr. HORTON. I don't believe he wished it to be understood in that manner.

Mr. WIPRUD. There would be no operations from New York to New Orleans?

318 Mr. HORTON. I don't think so.

Mr. WIPRUD. Where would the breaking point be, then, for the movement?

Mr. HORTON. The type of equipment we are presently using, it would break undoubtedly at Atlanta. See, there is no feasible and economic way of utilizing the equipment completely that we use north of Atlanta south of Atlanta.

Mr. SULLIVAN. Without making this too much of a round-table discussion, I suggest to you, sir, that your idea of New York and New Orleans came from something that Mr. Seymour said that in these times it might be, because of national defense and shortage of transportation, necessary to run trucks between New York and New Orleans. I believe that was the reference made to it.

Mr. HORTON. It must have been the reference. We contemplate no operation from New York to New Orleans.

Exam. BAKER. Let us take a recess for just five minutes.

(There was a short recess taken.)

Exam. BAKER. Let us resume. Mr. Wiprud hasn't come back yet, has he? We will suspend for a moment.

(There was a short intermission.)

Exam. BAKER. Let us resume.

I have a few questions to ask.

Mr. Woods. I have one or two I would like to ask. Would you rather I wait until after you get through?

319 Exam. BAKER. Suppose you go ahead, Mr. Woods.

By Mr. Woods:

Q. Mr. Lawson, referring to Exhibit 2, the map, I notice between Roanoke and Winchester and particularly a little farther up from Roanoke you indicate the restriction on the Horton rights along that route in your key, and also on the map. In preparing this map did you note that there were any restrictions on the Southeastern rights between Roanoke and the North?

A. Yes. Their rights permit them to pick up traffic at Roanoke for northbound—for northern points, but they haven't—I believe this is correct. They are restricted against the acceptance of shipments at points intermediate to Roanoke and Winchester for Winchester and north thereof.

Q. At any rate, the exact nature of that restriction is indicated by the last compliance order on the Knoxville to New York operation received by the Southeastern Motor Lines on November 29, 1938, which appears in the Commission's dockets; that is right, is it not?

A. Yes, that is right.

Mr. Woods. And I assume, Mr. Examiner, that the Commission will take judicial notice of that last compliance order in its docket.

Exam. BAKER. The Commission will take judicial notice of its own orders.

Mr. Woods. Yes.

320 By Mr. Woods:

Q. Now, with respect to Nashville, I believe you testified on direct examination, Mr. Lawson, that Southeastern operated into the Nashville area, and that Super Service supplied substantial competition in that particular section. Isn't it a fact that Southeastern does not now have either a certificate or a compliance order granting it the right to operate between Nashville and New York or between Nashville and Knoxville?

A. Well, I will answer you by saying this: In a rather cursory examination of the records of the Commission with respect to that part of the Southeastern operation, it disclosed to me they are operating under pending applications. However, I did not make any careful examination of the records with respect to that



phase of their operation because I wasn't concerned with it for the purpose of this exhibit, sir.

Q. Well, even in that cursory examination—

Mr. JOSELOFF. May I interrupt at this moment?

Mr. Brock will take the stand and you can go into that question as to the operating rights between Nashville and—

Mr. WOODS. Will he be on the stand tomorrow?

Mr. JOSELOFF. He will follow Mr. Lawson.

Mr. WOODS. He will follow Mr. Lawson.

That is all.

Exam. BAKER. Mr. Wiprud, did you conclude your examination?

321. Mr. WIPRUD. Yes, Mr. Examiner.

Exam. BAKER. Is there any other cross-examination?

Mr. Lawson, what have you to say with respect to competition via railroads between the points covered by your exhibit?

The WITNESS. I believe, without exceptions, sir, that all the points I have set forth in my exhibit are main line points, are main line points of class I railroads, and that between New York and Atlanta, Ga., practically all of these points are located on rail lines that parallel the highway routes. There may be an exception to that with respect to Richmond, Va. For example, the Southern Railway main line operation is from Washington south through Lynchburg and Danville, Va., into Greensboro, and they have a branch line—it is still a main line, however—extending from Danville to Richmond.

Exam. BAKER. Without going into the detailed operations of the various railroads that serve the territory, can you state whether, as a matter of fact, there is substantial competition existing presently between the motor carriers serving the Middle Atlantic and New England territory, on the one hand, and the Southeastern States, on the other, and railroads serving between those points?

The WITNESS. Oh, definitely, there is; yes, sir. Not only are we competing with the rail and water routes through the Hampton Roads or Norfolk gateway.

Exam. BAKER. Your exhibit does not specify any points  
322 in Pennsylvania other than Philadelphia. I believe there is competition presently existing between Horton Motor Lines and Barnwell Brothers as far as up as Scranton, Pa.?

The WITNESS. Well, there is only a very slight amount of competition there, sir. Horton's operation is restricted as to points north of Baltimore, to Selinsgrove, Pa., which is north of Harrisburg. There is competition as to Wilkes-Barre and Scranton. There are some mill points along the Susquehanna River, such

as Berwick, and places like that, I believe, along the end of that motor route up there that are served by other motor carriers, and I believe I am correct in saying that the competition is not so great between Horton and Barnwell in that area. See, Barnwell has rights to serve Harrisburg, which would be the largest point on that route, whereas Horton does not.

**Exam. BAKER.** Can you state whether or not there are any other motor carriers either included in your list or not included that operate generally from the southern points in the Carolina area to Scranton, Pa.?

**The WITNESS.** There are carriers included in my exhibit that operate there as well as ones that are not included.

**Exam. BAKER.** Does Akers Motor Lines operate between Charlotte and Scranton, Pa.?

**The WITNESS.** Not to my knowledge. However, they have a certificate that will permit them to do it. They don't  
323 operate there. The Atlantic States Motor Lines, Incorporated, operate into the eastern Pennsylvania section. Carolina Freight Carrier Corporation, carrier No. 6 here, I have seen their equipment up in that area on occasions, sir, but I don't know what their service is. The Mason & Dixon Lines operates through there, and of course—

**Exam. BAKER.** How about the Preston Trucking Company? Doesn't it operate there?

**The WITNESS.** Well, I don't know whether they do now, sir, but I have examined records of that company showing that at one time or another they did transport shipments up until—I think it was October of last year, but they don't operate into the South any longer. They at one time did go down there and quit. Roadway Express, Inc., operates up in that section, and they have a subsidiary operation—I perhaps shouldn't call it a subsidiary company, but it is an associated carrier called Shippers Freight Forwarding that operates east and west, that is, from New York to Akron and serves part of the—operates through part of the eastern Pennsylvania section, and I believe that it was—as a matter of fact here with your Commission that those carriers, it is proposed to consolidate their operations or unify them.

**Exam. BAKER.** In order to facilitate the Commission in determining the size of the carriers listed on your Exhibit No. 2,  
324 may it be stipulated that reference may be made to the annual reports filed with the Commission by each of the carriers which are included in the exhibit or mentioned in your oral testimony?

Is that agreeable to counsel for the parties?

Mr. SULLIVAN. I wonder if we couldn't have that extended to annual reports of any companies that are referred to in any of the testimony.

Exam. BAKER. What do you have in mind? Including the reports of the carriers involved in this proceeding?

Mr. SULLIVAN. Yes.

Exam. BAKER. I—my request for a stipulation deliberately excluded those companies because I feel it is incumbent upon the applicant to produce the records of the companies here involved while at the same time recognizing that they could not obtain the records of their competitors.

Mr. SULLIVAN. We are very happy to make the stipulation you suggest. I was just wondering if it might be useful to broaden it; that is all.

Exam. BAKER. Is that agreeable to other intervenors? There being no objection, the stipulation will be noted.

Mr. SULLIVAN. Do I understand, Mr. Examiner, that stipulation is restricted to the ones he has referred to here in previous exhibits, or will that be carried on to other witnesses covering other parts of the territory?

Exam. BAKER. The stipulation contemplates that the  
325 reference may be made to any of the reports mentioned in Mr. Lawson's testimony, or in the testimony of other witnesses with respect to competition.

Are there any other questions of this witness?

Mr. SULLIVAN. I would just like to ask him one question.

By Mr. SULLIVAN:

Q. Is there also substantial competition in the territory you have been discussing or parts thereof between the motor carriers concerned in this merger—proposed merger, and various of the carloading companies?

A. Well, the carloading companies do not serve as many of the points in the Southeast as I have set out here in my exhibit.

Q. That wasn't my question. I had a more general question than that.

A. Well, I was going to more specifically answer your question. There is substantial competition with respect to such points as Atlanta, Ga., points in Florida and, I believe, in the Mississippi Valley area. The forwarding companies at one time or another have offered services to different points and for some reason apparently withdrew. For example, they would have forwarding companies that operate in the Greensboro-High Point furniture area, and I believe they confine their activities to furniture in that section, but there is one motor carrier operating, the Akers Motor Lines, the No. 1 carrier on my exhibit here, transports forwarding

326 company traffic to quite a large extent, but from the information that I have been able to develop that transportation is between New York and Atlanta, Ga., Atlanta being a break bulk point, and when I answered your question I had in mind the principal break-bulk points of the forwarding companies. That doesn't mean, however, that Akers, for example, does not transport forwarding traffic to Atlanta and there give it to other motor carriers to take beyond to more distant destination points.

Q. Well, more specifically—I will word my question another way: Do not the forwarding companies, so-called carloading companies, offer service to many of the points involved in the territory you have been discussing either directly or through a combination of the—the part of their haul that they perform by rail and the part of their haul that they perform through trucking companies of one kind or another?

A. There is a substantial forwarding company operation—and when I say “company” I am including all of them that operate—

Q. Well, would you name. Name what carloading companies you are talking about then because we don't know which ones operate there.

A. I have in mind Acme and Universal and their operations—they have substantial operations through the Ohio River gateways from the Central territory, for example, Cleveland, and Chicago, down that way. Now, I don't know that they do transport traffic from New York to Cleveland, for example, and then bring  
327 it through the Ohio gateway. It is entirely feasible of course, but one of the forwarding companies—and I believe that is Acme, uses the Akers Motor Lines in a direct transportation from the East into the southeastern part of the country.

Q. Well, does the Universal Carloading Company, for example, offer service to points south of Philadelphia?

A. From the Southeast to—

Q. Or from the—say New York-Pennsylvania area and New England area, do they offer carloading services—at least, do they purport to hold out to the public tariffs covering shipments to points to North Carolina, South Carolina, Virginia, Georgia, some of those States? That is what I am driving at.

A. No, to my knowledge they do not hold out such broad operations as that.

Q. At all, I mean? Do they have any service down in that territory?

A. They have some service in that territory, but it is not as broad as up in the eastern territory, for example.

Q. I hadn't asked that, but leave it that way.

Exam. BAKER. Are there any other questions of this witness?

The witness is excused.

(Witness excused.)

Mr. COCHRAN. Mr. Examiner, Mr. Sutton tells me that he has just one statement he wants to make in correcting the impression as to his testimony about Brown.

328 Exam. BAKER. First, do you wish to offer Exhibit 2?

Mr. COCHRAN. Yes, I do. Excuse me.

Exam. BAKER. Exhibit No. 2 will be received in evidence.

(Exhibit No. 2, witness Lawson, received in evidence.)

Exam. BAKER. Now, Mr. Sutton.

Mr. COCHRAN. Mr. Sutton, you can make the statement if you wish to stand there.

J. A. SUTTON resumed the stand and testified further as follows:

#### DIRECT EXAMINATION

The WITNESS. In December of 1938 bids were asked for Horton's requirements of the type that were obtained from Brown Manufacturing & Equipment Company. When you showed me the exhibit—that is a long time in this motor carrier business. Things move very fast and for a moment I was doubtful of it, but they were. Bids were asked of various companies.

Mr. COCHRAN. Is that all you have?

The WITNESS. That is all.

Exam. BAKER. Do you have any questions?

Witness is excused.

(Witness excused.)

Exam. BAKER. Next Witness.

Mr. COCHRAN. Mr. Brock.

329 CLIFFORD C. BROCK, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Your address, Mr. Brock?

A. Columbia Road, Bristol, Tenn.

Q. Will you state your position and duties with respect to Southeastern Motor Lines, Incorporated?

A. President and general manager.

Q. And you have been in that position for some time?

A. Since the latter part of March, 1938.

Q. I ask you whether or not the date of incorporation of Southeastern Motor Lines, Incorporated, was February 9, 1938.

A. That is correct.



Q. Will you describe briefly the history and background of Southeastern Motor Lines.

A. Southeastern Motor Lines acquired through purchase from the trustee in bankruptcy Hoover Lines, Incorporated, the operating rights and properties, franchise, in March, 1938; began operation—and at the time they began operation the monthly revenue amounted to only ten or twelve thousand dollars a month. It increased considerably during the year 1938, the balance of the year 1938, until approximately a revenue of \$20,000 per month was reached at the end of the year.

Q. Now, did Southeastern subsequently acquire another company in May of 1939?

330 A. Yes; they acquired through purchase in May of 1939 and began operation in December of that year the operating properties and franchise of Spencer Miller, doing business as Boone Transfer Company.

Q. And those acquisitions, together with its own business, explain the history and growth of the company to date?

A. That is right.

Q. Now, I ask you whether or not there have been any amendments to the charter of Southeastern Motor Lines since July 15, 1940, which was the date of the hearing in Docket No. MC-1223, 1244, and 1264?

A. There have been none.

Q. Southeastern is a carrier of commodities generally?

A. General commodities, yes.

Q. Now, then, will you state for the record generally the status of its rights, operating rights?

A. Southeastern operates—operates principally between Nashville, Tenn., and New York City, and between Nashville, Tenn., and Winston-Salem, N. C.

Q. And more specifically, do you have a reference to the I. C. C. docket numbers descriptive of its rights?

A. They are more thoroughly defined in Compliance Order of the Commission dated November 29, 1938.

Q. That would be Docket No. MC-60451 and Sub. Nos. 1 through 3?

331 A. Sub. No. 3 will give a more complete description of the operating rights of Southeastern.

Q. But in any event those operating rights are on file in the records of the Commission?

A. That is correct.

Q. You wish the Commission to take judicial notice of those rights for the purposes of this hearing?

A. That is right.

Q. Now, then, there was some question with the previous witness as to the status of the operating rights of Southeastern between Nashville, Tenn., and New York. Will you state what that situation is, please?

A. A hearing has been held before an Examiner on that application, and it is still pending before the Commission.

Q. Has Southeastern received an order from the Commission by a Division or by the full Commission?

A. It has not, not on the operating rights covered by the application—application for rights between Knoxville and Nashville, covering that section of it.

Q. Between Nashville and New York City—

A. Yes.

Q. Is what I had in mind.

Now, what can you tell us about the intrastate rights of Southeastern?

A. Southeastern operates intrastate only in one State, that being North Carolina, and about three-fourths of our intrastate rights in that section is covered by intrastate authority issued by the Utilities Commission of the State of North Carolina.

Q. Is that a relatively small amount as compared with your entire interstate business?

A. Yes, very small, sir, percentagewise in revenue; I think it is 1.55.

Q. Do you have figures available showing the tonnage handled by Southeastern during the year 1940 and the first six months of 1941?

A. Total tonnage handled by Southeastern for the year 1940, 48,460,255 pounds. For the first six months of 1941, 34,629,247 pounds.

Q. What is your estimate as to the tonnage for the entire year 1941?

A. Run close to 80,000,000.

Q. Now, of that tonnage, what percentage would you say was so-called interchange freight?

A. I am sorry, I do not have the correct percentage figures on that, but I would say over 50 percent, probably 60 percent.

Q. Now, then, of that percentage what percentage would you say is interchanged with carriers in the present or proposed unification?

A. Fifteen to eighteen percent.

332 EXAM. BAKER. Do you mean 15 percent of the 60 percent?

THE WITNESS. That is right; 15 to 18 percent of our total interchange business.

Q. Now, in your opinion, would there be any substantial diversion of tonnage from those carriers not in the proposed unification?

cation to those carriers in the proposed unification, if this application be approved?

A. No, I don't see where there would be any material change whatever, because the—

Q. Will you state your reasons, please?

A. The principal points that we interchange with carriers now outside the unification are points which are not served by the carriers inside the unification. In addition to that, a large percentage of traffic now moving is shipper routed, and the carrier has no authority to change the routing, or at least we do not.

Q. And would you continue to follow that policy?

A. We would follow the shipper's routing.

Q. What can you tell us about interchange business moving from points in the territory served by your lines to points and places in New England?

A. We have a very substantial amount of traffic moving into the New England territory.

Q. And do you also receive a substantial amount of tonnage?

A. We receive traffic from the New England territory moving to points in the South, Southwest.

Q. In your opinion, would this proposed unification redound to the benefit of the shippers of this traffic?

A. Unquestionably so.

Q. In what respect?

A. Considerable time could be saved in the handling of traffic where we are now interchanging it at Philadelphia and New York for upstate New York and New England territory. Traffic arriving in New York usually late in the afternoon, too late for handling and delivery to the connecting carrier that afternoon, whereby it is not handled until the following day. That could be eliminated. There would be a saving there of from 12 to 24 hours on traffic moving into upstate New York and New England.

Q. What carriers are you interchanging with now for New England points?

A. Principally Consolidated; Consolidated Motor Lines.

Q. Would there be any diversion of your interchange, then, in so far as New England is concerned, from companies not members of this proposed unification if the proposed unification were to be approved by the Commission?

The WITNESS. Will you read that question again?

(Question read.)

Q. If you don't understand that, I will reframe that question, Mr. Brock.

335 A. If you will.

Q. I will be glad to.

A. If you will reframe it, it will probably make it easier.

Q. The question is withdrawn.

If the proposed unification were to be approved by the Commission would there result, in so far as New England business is concerned, any diversion of freight from carriers not in the proposed unification to carriers in the proposed unification?

A. Not any substantial amount, certainly not. As I stated a little bit ago—

Q. I just wanted to have you repeat that for emphasis. I believe you stated the same thing a minute ago in a general way.

A. Yes, there would be no diversion to speak of.

Q. Now, then, would the same situation apply so far as service into and from New York State points?

A. Yes, the same would apply there.

Q. Now, will you develop for the record, please, the terminals of Southeastern from the standpoint of the number and adequacy?

A. Southeastern maintains seven terminals located in New York, Roanoke, Bristol, Knoxville, Boone, and Winston-Salem.

336 Q. Will you comment as to the adequacy of these terminals at the present time?

A. I cannot say that any of our terminals are adequate for the handling of traffic, the volume which we are now handling and which is continuing to increase month by month with the exception of one located at Boone, N. C.

Q. Now, then, do you see any benefit that will result, so far as these operations of these terminals are concerned, if the proposed acquisition be approved?

A. Yes, I think we should have much better terminal facilities. We would have finances to construct terminal facilities suitable for our business.

Q. With regard to your Bristol terminal, do you wish to make special comment, for the record—Bristol, Va.?

A. We have recently enlarged our Bristol office and terminal, and even with the enlargements we do not now have sufficient terminal facilities or office space.

Q. You heard Mr. Horton testify, Mr. Brock, concerning the—

EXAM. BAKER. Mr. Joseloff, will you keep your voice up just a little bit louder, please?

Mr. JOSELOFF. Yes, I will be glad to.

By Mr. JOSELOFF:

Q. You heard Mr. Horton testify, Mr. Brock, with regard to the situation in certain territories on terminals, that it would be possible to consolidate the operations of some of the companies in certain areas from two terminals to one terminal and  
337 that would afford also the further opportunity to open up a new terminal at another nearby point, which at the present time has no terminal. Would that situation apply to any points served by Southeastern?

A. Yes.

Q. And can you name, for illustration, a representative point where that might take place?

A. It would apply to New York City, Bristol, and Winston-Salem, N. C.; and Knoxville, Tenn.

Q. What I have in mind specifically is, do you have a point where the terminals might be consolidated and also in mind an adjacent or nearby community not now serviced by a terminal which could be serviced to advantage?

A. Yes; by consolidation of terminals at Knoxville we could install a terminal at Kingsport or Johnson City, Tenn.

Q. And, in your opinion as an operator, would it be advantageous for service to the public to do something of that sort?

A. Very definitely so.

Q. Now, will you explain for the record the maintenance set-up and operations of Southeastern?

A. Southeastern maintains its own shop at our own terminal, Bristol, Va., doing practically all of our repair work, including motor overhauling. However, we do not have as well a trained personnel and equipment as we should like to have  
338 for that work.

Q. Do you see any advantages to be derived to Southeastern insofar as the maintenance and servicing of its equipment with the introduction of centralized maintenance shops or more scientific and more highly developed maintenance set-ups?

A. Yes. With centralized and well located maintenance shops it would reduce to a large extent the road failures which we now have in the operation.

Q. Do you see a need for additional maintenance shops in the territory served by Southeastern?

A. You mean other than the ones we have now?

Q. Other than the ones you have now.

A. Yes, sir.

Q. I ask you whether or not the Southeastern operations are adequately covered by all kinds of insurance, and, if so, are they above the requirements of the Interstate Commerce Commission?



A. That is correct.

Exam. BAKER. Which is correct, Mr. Brock, they are above the requirements?

The WITNESS. Yes, sir.

Q. And all kinds required by the Commission are maintained?

A. That is true, and in connection with that I think there is an error on the exhibit of property damage insurance.

Q. That isn't specifically set forth on your exhibit?

339 A. It isn't.

Q. It is just covered by a general statement that it is adequately covered by insurance.

Now, with regard to the contract of the stockholders of Southeastern, of Associated Transport, dated June 11, 1941, is the main body of that contract substantially the same as the Horton contract identified as Exhibit C-1 in this application?

A. It is.

Q. And are the differences set forth as indicated in Exhibit C-1-B of this application?

A. Yes.

Q. Is 100 percent of the stock of Southeastern being exchanged for stock of Associated Transport?

A. Yes, sir.

Q. I believe the other items are self-explanatory as set forth in the exhibit. I will not question you on them, Mr. Brock.

A. Yes.

Q. Now, you heard Mr. Horton and Mr. Seymour testify as to the benefits to be derived from the proposed unification to the public, to the shippers, and to the companies involved.

A. I did.

Q. You were here during their testimony?

A. Yes, sir.

Q. During all of it?

340 A. I was here during all of the testimony with reference to the benefits to shippers.

Q. And were you here during the testimony with regard to benefits to the respective companies—

A. Yes.

Q. Economies to be—

A. Yes, sir.

Q. Effected? And I ask you whether or not you concur in those statements.

A. I do.

Q. And generally whether or not the proposed unification would result in a better service at a lower cost.

A. Definitely.

**EXAM. BAKER.** Mr. Brock, by lower cost do you refer to lower cost to the operating companies or lower rates to the public? What do you have in mind?

**The WITNESS.** Lower cost to the operating companies automatically eventually finds its way back to the shipping public.

**Q.** And would this be true, Mr. Brock: That in view of increasing costs on industry in general—in view of these times, increased taxes and increased price of materials and purchases, that the tendency towards lower cost would at least take up the  
341 slack or help take up the slack between those other costs?

**A.** It would at least serve as a cushion.

**Q.** And do you recognize in that an important benefit here to the companies and the public?

**A.** Yes.

**Q.** Could you comment for a bit, please, on the benefit of additional and strong financial resources of the Associated Transport so far as Southeastern is concerned with regard to particular working capital, additional cash that Southeastern would require or could use?

**A.** We do not now have and have never had the desired working capital that our company should have. Through the unification, I believe that the capital would be made available sufficient to meet our demands.

**Q.** In your opinion, how much additional cash would Southeastern need for adequate working capital?

**A.** Roughly a hundred thousand dollars; that is, to liquidate the bank loans which Southeastern now owes and to supply the equipment which we need at this time or anticipate needing in the very near future. Taking into consideration terminal—adequate terminal sufficient, it would take in excess of a hundred thousand dollars.

**Q.** Now, then, have you some estimate as to how much additional would be needed, not so much working capital, but for improvement of terminal facilities and the purchase of additional equipment?  
342

**A.** Roughly \$75,000.

**Q.** Is Southeastern in a position to do that today?

**A.** No, sir.

**Q.** Now, I will ask you to look at the map which indicates generally the territory serviced by Southeastern, and ask you, first, whether or not the operations of Southeastern are competitive with the operations of any of the members of the proposed unification?

**A.** Speaking competitively; no.

**Q.** In other words—well, would you mind elaborating on that statement with particular regard to the rights that Southeastern

has from points and places below Roanoke, Va., to points and places above it?

A. Well, we do not come into direct competition with any of the other carriers involved in this application south of Roanoke, Va., on traffic moving into the eastern territory.

Q. And by "eastern," you mean territory really northeast of Roanoke, Va.?

A. Yes.

Q. And why is that?

Q. Well, they are not in a position to really render the service that we do.

Q. What I mean to ask by that, or to have you state by that question, was the rights of Southeastern to pick up  
343 from points south of Roanoke for delivery to points north of Roanoke, Va., and the converse rights only to pick up from points north of Roanoke, Va., to deliver to points south of Roanoke, Va. Is that a correct explanation of the rights of Southeastern?

A. That—that is correct, on points east of Roanoke, Southeastern does not have the right to pick up and deliver freight—pick up freight east of Roanoke for delivery east of Roanoke, or to pick up freight westbound east of Roanoke for delivery east of Roanoke. Below Roanoke we are—

Q. When you talk about "east of Roanoke," you really mean northeast, do you not?

A. Yes; northeast.

Q. May I have that map, please?

A. Below Roanoke we are unrestricted, except between Knoxville and Nashville, Tenn.

Q. In other words, Southeastern could not pick up a shipment, for example, for delivery between Richmond, Va., and New York City?

A. That is correct.

Q. Or between Washington and New York City?

A. That is correct; we cannot handle that type of traffic.

Q. Because those are the points lying northeast of Roanoke, but Southeastern could deliver between Bristol and Richmond, Va.?

344 A. That is right.

Q. And between Bristol—

A. Through interchange, we, of course, do not make Richmond direct.

Q. And between Bristol and New York City Southeastern could handle that?

A. That is correct.

Q. Or between Bristol and Washington, D. C.; is that correct?

A. That is right. In other words, we cannot pick up between, say, Winchester, Va., and deliver the same traffic in Washington, Baltimore, Philadelphia, New York.

Q. Well, then, under that situation do you see any restriction or elimination or even a tendency towards elimination of competition with—in so far as the members of the proposed unification are concerned?

A. In that connection there are no competition today between the members of the proposed unification and ourselves in that territory.

Q. And the exact competition that exists today would remain; is that correct?

A. That would be true; yes.

Q. Were you present while Mr. Lawson was testifying and introduced Exhibit 2 indicating competition remaining in so far as the southern carriers are concerned, of which Southeastern was one?

345 A. I was.

Q. I ask you whether or not that exhibit correctly represents the situation in so far as Southeastern is concerned, showing you Exhibit 2?

A. This exhibit does not set forth the competition offered Southeastern by the Hoover Truck Company, Hoover Motor Express, Dixie, Ohio Express, and the Silver Fleet Motor Express.

Q. What type of operations or companies are those four last mentioned?

A. They are very substantial carriers, very large carriers.

Q. So that, in addition to what is set forth in this exhibit, you also wish to have these other carriers added or—for the record; is that correct?

A. Yes.

Exam. BAKER. Do any of those carriers operate to the eastern seaboard?

The WITNESS. Not directly. They all handle traffic to the eastern seaboard.

Q. Now, then, in addition to the carriers set up in Exhibit 2 and those that you mentioned, are there others—other carriers as well but too numerous to mention, perhaps?

A. I don't recall others right at the present time.

Exam. BAKER. Did you mention Super Service Motor Freight Lines?

346 The WITNESS. No, sir; I did not. I mentioned Silver Fleet Motor Express.

Exam. BAKER. Are the Super Service Motor Freight Lines a competitor of Southeastern?

The WITNESS. Yes, sir.

Exam. BAKER. Where do they operate?

The WITNESS. Legally, between Philadelphia and Nashville, Tenn. They are operating into New York.

Exam. BAKER. Do they generally serve the intermediate points?

The WITNESS. Yes; they serve intermediate points. I believe they are unrestricted entirely between Philadelphia and Nashville, Tenn.

Mr. WOODS. That is co'rect, Mr. Examiner.

Exam. BAKER. I am sorry to interrupt, Mr. Joseloff. Go ahead.

Mr. JOSELOFF. That is perfectly all right, Mr. Examiner.

By Mr. JOSELOFF:

Q. I ask you whether or not, in addition to Super Service, other carriers between Bristol and Philadelphia would be Mason and Dixon Lines and Wilson Freight Forwarding Company?

A. Mundy Motor Lines in addition.

Q. What is the answer to my first question?

A. Mason & Dixon Lines. I do not recall Wilson Freight Forwarding Company.

347 Q. And between such points, for example, as Bristol and Winchester, whether or not they are also serviced by Super Service?

A. Super Service, Mason & Dixon, and Mundy Motor Lines serve that territory between Bristol and Winchester, then from Roanoke into Winchester and as far as Baltimore, we have Red Lines, Incorporated.

Q. Does W. H. Tompkins Company serve that territory?

A. They serve as far as Roanoke, Va., as far east as Roanoke over that road.

Q. Now, you are a director of Associated Transport, are you not, Mr. Brock?

A. Yes, sir.

Q. You are also aware and as a director are acquainted with negotiations that have been made with Associated Transport by companies other than the companies set forth in this application?

A. Yes.

Q. And whether or not such—state whether or not any negotiations or discussions were had with Super Service—

Exam. BAKER. Don't answer that. I don't believe that is relevant, Mr. Joseloff.

Mr. JOSELOFF. I will withdraw that question.

By Mr. JOSELOFF:

348 Q. Mr. Brock, will you state generally what your reasons are for Southeastern, the stockholders of Southeastern, joining in this proposed unification?



A. Gives a much better opportunity to serve the public much more efficiently; much more capable through the increased financial set-up that we will have in the unification. It will broaden the territory coverage considerably.

Q. How do you consider the future and stability of the business of the motor carrier industry particularly with reference to your own company as a basis for your reasons in joining with this group?

The WITNESS. Mr. Reporter, will you read that question?

(Question read.)

Mr. JOSELOFF. If that isn't clear, I will rephrase that question, Mr. Brock.

The WITNESS. If you will.

By Mr. JOSELOFF:

Q. Do you see anything in the future trend of business, so far as motor carriers are concerned, that would in any way motivate your reason for joining in with the other companies in this proposed unification, any tendency in the future, or any uncertainty in the future that would at all influence your judgment in joining?

A. Definitely so; in joining in the unification they would get the advantage of the knowledge of some of the best operators in the industry today.

Q. Do you see it as a safeguard in the event a turn in business would take place and business drop off?

349 A. Yes. I think we would be in a much better position to protect our financial interests than we are today.

Q. What would its effect be on the ability of Southeastern to render service to the public?

A. We would be in a much better position to render service.

Mr. JOSELOFF. That is all I have.

Exam. BAKER. Any cross-examination?

Cross-examination by Mr. Woods:

Q. Mr. BROCK, is it correct to say about this restriction that you cannot pick up anything between Roanoke or New York either going north or coming south out of Roanoke?

A. We pick up at Roanoke and every point east thereof.

Q. Let me put it differently. Going out of Roanoke towards New York, can you pick up any new freight under your restriction?

A. Not for delivery east of Roanoke.

Q. Well, can you pick up any freight at all for delivery?

A. Southbound.

Q. Going out of Roanoke to New York?

A. You could pick it up on a northbound run.

Q. You could pick it up on a northbound run and bring it all the way back down south; is that it?

A. You wouldn't necessarily have to haul it in; no.

Q. Does that same restriction apply coming out of Roanoke south or southwest?

350 A. Yes; we cannot pick up in New York or south of New York for delivery east of Roanoke.

Q. Q. By "delivery east of Roanoke," you mean northeast of Roanoke, do you not?

A. Northeast; yes.

Q. Now, can you give us an estimate—or let me put it differently. Let me put it this way: Doesn't the bulk of your freight for transportation northeast or north originate at Nashville either by interchange or originate at Nashville?

A. No.

Q. Where does the bulk of your freight originate? I am talking about going northeast.

A. Northeast of Roanoke?

Q. Yes. No; I am talking about northeast. That is, your freight that is bound north on your lines.

A. The principal part of it—or, rather, the largest percentage originates in the territory of Bristol and surrounding territories.

Q. You mean Johnson City, Kingsport, and Bristol?

A. That is Bristol, Knoxville.

Q. Do you have any figures on that?

A. As to the break-down between terminals?

Q. Yes.

A. No; I have no figures on it.

351 Q. You do have your interchange figures at Nashville, don't you?

A. No; I do not have interchange figures at Nashville.

Q. You have some records showing the amount of interchange freight at Nashville, don't you?

Mr. JOSELOFF. Interchange for where, Mr. Woods?

Q. I mean freight picked up at Nashville for other parts south of Nashville or west of Nashville which is bound north on South-eastern's line?

A. I do not have those figures available.

Q. Can you give us an estimate of about what they show in tonnage?

A. Of interchange freight?

Q. Yes.

A. For the first six months of this year, I would say, roughly, 2,000,000 pounds.

Q. That is 2,000,000 pounds out of a total of 34,000,000 representing the total freight in the first six months of 1941; is that right?

A. Yes; that is, originating—or, rather, being interchanged at Nashville moving northbound; that is right. Is that the—your question, does that answer it fully?

Q. Yes, sir; that was the question.

Now, I believe you also stated on direct examination, Mr. Brock, that your right to operate between Nashville and New  
352 York or between Nashville and Knoxville—it is the same thing—is now pending before the Commission pursuant to an application that you filed some time ago; is that correct?

A. That is correct.

Q. Now, as a matter of fact, hasn't the Commission on two previous occasions denied you that authority?

Mr. JOSELOFF. Mr. Examiner, I think all of that information is in the Commission's files and the Commission can take judicial notice of it without repeating all of that information for the record.

Exam. BAKER. Do you object?

Mr. JOSELOFF. Yes; I object.

Exam. BAKER. Objection sustained.

Mr. WOODS. Just one other question on that.

By Mr. WOODS:

Q. As a matter of fact, Mr. Brock—you will probably have an objection on this, too—at the present time there is an Examiner's report outstanding on that application dated March 12, 1940, which is adverse—

A. I am not sure—

Mr. JOSELOFF. Just a minute, Mr. Brock, before you answer. I object to that question for the same reason, Mr. Examiner.

Exam. BAKER. Sustained.

Mr. WOODS. That is all.

Exam. BAKER. Any further cross-examination?

353 Mr. WIPRUD. Yes.

By Mr. WIPRUD:

Q. Southeastern is a going concern, isn't it, Mr. Brock?

A. Yes, sir.

Q. Has it enjoyed an increase in business over the past several years spoken of here by the previous witness?

A. Since its inception it has enjoyed an increase in business.

Q. And if this unification were not approved it would continue to do business, would it not?

A. I think so; yes, sir.

Q. Referring to the interchange points of Southeastern, can you name any points, Mr. Brock, where Southeastern interchanges with another company party to this proceeding and an independent company?

A. Name a point where we interchange with a party, party to this proceeding, and one who is not a party to this proceeding.

Q. That is right.

Mr. JOSELOFF. You may have the map in front of you, if that will help you, Mr. Brock.

A. New York City.

Q. Any other point?

A. Yes. Winston-Salem, N. C., Philadelphia.

Q. Are those all?

A. As I understood your question, you wanted one point,  
354 I will go over this map and see if I can't aid you by giving you all of them.

Q. I think that will suffice for the purpose of this question.

Assuming that the unification were approved, what, in your opinion, would be the situation insofar as interchange with the independent is concerned?

A. I don't think it would effect it at all; in very few cases, if any.

Q. Wouldn't the tendency be to route the traffic insofar as the carrier can route the traffic, over the unified lines?

A. In our present position, a large percentage of the traffic that we are now interchanging with carriers outside the unification could not be made by those inside; and a large percentage of the traffic is shipper routed, which we do not control the routing of.

Q. Yes; I understand, but to the extent you can control it, it would logically go over the unified lines; wouldn't it?

A. Yes; to that percentage that you can control it.

Q. Speaking of the elimination of interchange, that is an important part insofar as the considerations involved—the public consideration is involved in this unification is it not?

A. I don't believe I get the meaning of that.

Exam. BAKER. Will you keep your voice up, Mr. Brock? What was your answer?

355 The WITNESS. I say, I don't believe I get his meaning of that.

Mr. WIRUD. Should I—I will restate the question.

By Mr. WIRUD:

Q. One of the advantages claimed for this unification is the elimination of interchange; isn't it?

A. Yes, that would be a very definite advantage to the shipping public.

Q. And to that extent, then, it would afford a substantial advantage to Associated over any combination of independent carriers?

A. Not any more so than an individual company has today over—for example, today we operate direct from Nashville to New York. We certainly have some advantage over our competition, certain of it who do not operate direct but through interchange.

Q. Then it is a substantial advantage over any combination of carriers between given points?

A. It would be some advantage, possibly.

Q. Is it your opinion that if this unification is approved that the Associated Transport would be the largest carrier in this entire area?

Mr. SULLIVAN. Excuse me. Does counsel mean the southern area where he operates, or are we talking about the whole picture?

Mr. WIPRUD. Talking about the whole picture.

356 A. You mean the territory involved in this application?

Q. That is right. That is right. There would be no other single carrier, Mr. Brock, that would be comparable in size; would there?

A. In size it would be the largest; yes.

Exam. BAKER. Mr. Brock, wouldn't it be the largest truck operator in the United States?

The WITNESS. Mr. Examiner, I don't know just how large some of these others are.

By Mr. WIPRUD:

Q. Do you believe that the approval of this application would lead to other and further unifications of a similar size?

A. I would see no reason why there shouldn't be.

Q. There is no proposal here, is there, Mr. Brock, to reduce rates—

A. No, sir.

Q. As a result of the economies that are claimed to be effected? You are a member of the board of directors of the Associated Transport?

A. Yes, sir.

Q. Mr. J. S. Arnold is a member of the board of that organization?

A. Yes, sir.

Q. Is he connected with Kuhn, Loeb & Company?

A. Yes, sir.



357 Mr. WIPRUD. I believe that is all I have, Mr. Examiner.

Exam. BAKER. Any further questions?

Mr. SULLIVAN. The question of Mr. Brock as to whether or not there would be another merger in size similar to this would be a matter that would be definitely within the control of the persons involved plus the Interstate Commerce Commission.

The WITNESS. Yes; I only answered that question in this manner: That I saw no reason why there should not be.

By Mr. SULLIVAN:

Q. You mean the Interstate Commerce Commission is the only reason why there should not be? How about the Department of Justice?

Exam. BAKER. Strike that, Mr. Reporter.

Q. And are you familiar at all with the operations of the Delaware Corporation whose stock is listed—or is traded over the counter on the Exchange known as the United States Truck Lines of Delaware?

A. No; I am not.

Q. You wouldn't know what their size or their current volume is?

A. No. As I stated, I am not familiar with several of the larger truck operations in the middle western section of the country.

Mr. SULLIVAN. That is all.

Mr. WIPRUD. That is all.

358 Exam. BAKER. Any further? Witness is excused.  
(Witness excused.)

Exam. BAKER. We will adjourn until 9:30 a. m., tomorrow morning.

(Whereupon, at 5:30 o'clock p. m., August 19, 1941, the hearing was adjourned.)

359 Before the Interstate Commerce Commission

Docket No. MC-F-1612.

ASSOCIATED TRANSPORT, INC.—CONTROL AND CONSOLIDATION—  
ARROW CARRIER CORPORATION ET AL.

Docket No. MC-F-1613.

ASSOCIATED TRANSPORT, INC.—ISSUANCE OF SECURITIES

HEARING ROOM "B,"

I. C. C. BUILDING,

Washington, D. C., Wednesday, August 20, 1941.

Met, pursuant to adjournment, at 9:30 a. m.

Before Vernon V. Baker, Examiner.

Appearances: (The same as heretofore noted.)

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## PROCEEDINGS

Exam. BAKER. Come to order, please. You may proceed.

Mr. JOSELOFF. Mr. Arbour, will you take the stand, please.

EVERETT J. ARBOUR, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Mr. Arbour, will you give your full name and address to the Reporter?

A. Everett J. Arbour, 1179 Main Street, Hartford, Conn.

Q. Will you state your position and duties with regard to the Consolidated Motor Lines, and subsidiary companies?

A. I am chairman of the board of Consolidated Motor Lines of Connecticut, treasurer of the United Arbour Express, treasurer of the Consolidated Motor Lines of Massachusetts, and president of United Sales & Manufacturing Company.

Q. Will you state for the record the dates of incorporation of the Consolidated Motor Lines, Inc., and the subsidiary companies?

A. The Consolidated Motor Lines of Connecticut, 4-28-30; United Arbour, 4-6-29; Consolidated of Massachusetts, 2-13-35; United Sales, 6-6-29.

Q. Will you also give a list of the stockholders of the subsidiary companies of Consolidated Motor Lines?

A. The stockholders of the Consolidated Motor Lines of Massachusetts and the United Arbour Express and the United Sales & Manufacturing Company are the same as the Consolidated Motor Lines of Connecticut, with the exception of directors' qualifying shares.

Q. In other words, those subsidiaries are wholly owned by the parent company, except for the statutory requirements for directors' qualifying shares?

A. That is correct.

Exam. BAKER. Is the parent company the beneficial owner of the directors' shares?

The WITNESS. I believe it is. Yes; it is.

By Mr. JOSELOFF:

Q. Now, will you tell us briefly the business of the United Arbour Express.

A. The United Arbour Express is a contract carrier operating within the State of Connecticut, and has the right to handle chain-store merchandise to points within that State and so listed in their permit.

Q. If this application be approved, is it agreed that the contract operations of United Arbour Express be discontinued and

any requisite permission therefor be filed with the Interstate Commerce Commission?

A. It is agreed.

Q. Now, will you state the business of Consolidated Motor Lines of Massachusetts?

A. Consolidated Motor Lines of Massachusetts is a non-  
363 operating company, for the purpose of holding title to the Massachusetts registered vehicles.

Q. Will you explain the purpose of that, by giving for the record an illustration?

A. Its purpose is to take advantage of the reciprocal agreement between States on registration. For instance, the Connecticut corporation has a very large operation in the State of Massachusetts, which enters into New York, Pennsylvania, and Jersey. If it were to register those vehicles in Massachusetts, where they are domiciled, in New York State, they would not be extended the reciprocity that a Massachusetts corporation would receive, and therefore the Massachusetts corporation registers its vehicles, and they are not a foreign corporation going into New York State particularly, where we had difficulty, to start with.

Q. Aside from the purpose, then, of merely holding legal title to the vehicles registered in Massachusetts, does the Consolidated Motor Lines of Massachusetts serve any other function?

A. It does not.

Q. Will you state the business of United Sales & Manufacturing Company?

A. The United Sales & Manufacturing Company before the purchase of same by Consolidated was known as the Loro Tire Service. This company had been doing our tire repair work, furnishing us with tires and some accessories.

364 In May of 1939, we purchased the Loro Tire Service and changed its name to United Sales & Manufacturing. Since that time the company has continued to handle our tire repairs and to sell to us tires and accessories. The purchase really was the taking over of Loro's equipment. The company was in such shape that we just took over its equipment and carried on the business on the basis that I have explained.

Q. Now, is the business of United Sales & Manufacturing Company practically entirely with the parent company, the Consolidated Motor Lines?

A. Almost in its entirety. Very little of it is done with the outside, and of that little that is done, in most cases it is done by the employees of the company.

Q. Could you state roughly what percentage is done with the outside?

A. Well, I think the best example is that in 1941, for the first six months of this year, one percent was done on the outside.

Q. And of that, how much would you say was with the employees of Consolidated?

A. Almost entirely, if not entirely.

Q. Now, have there been any amendments to the charter of Consolidated Motor Lines, or its wholly owned subsidiaries since the date of the hearings before this Commission in Docket Nos. MC-1223, 1244, and 1264?

365 A. There have not.

Q. Will you describe briefly the extent of the participation of Phoenix Securities Corporation in Consolidated Motor Lines?

A. The Phoenix Securities Corporation are the holders of, I think, exactly 33.8 percent of Consolidated Motor Lines' stock. This was purchased, I believe, back in 1936, and some additional in 1937, at the time of the Simpson acquisition. They are represented on the board by three directors, the board consisting of nine directors.

Q. Are they, in every sense of the word, a minority stockholder in the Consolidated Motor Lines?

A. They are.

Q. Mr. Arbour, at the previous hearing in the docket numbers to which I have just referred, the outstanding capital stock of Consolidated Motor Lines was set forth as 2,289 shares. At the present time, its set-up has 2,199 shares, a difference of 90 shares. Will you explain how that difference is accounted for?

A. Yes, sir. Ninety shares were held by a stockholder Frank T. Frey and his wife, I believe. These shares were purchased by the company and canceled.

Q. Now, will you describe briefly the history of Consolidated Motor Lines?

366 A. The Consolidated Motor Lines is the result of an operation that was started in 1907 by my father, Joseph Arbour. He started with a horse and wagon, and it has continued to grow on, until this time, by its own natural growth and acquisitions and mergers, the first of which took place in 1930, at which time the name was changed from Joseph Arbour & Son to the present name, Consolidated Motor Lines, Inc.; a second merger occurred in 1932, and one, I believe, in 1933, and the final merger was in 1937, the acquisition of the Simpson Transportation Lines, Norman Thompson Transportation, and Ralph's Motor Express, which were approved by the Commission.

Q. Now, will you state briefly the nature of the business of Consolidated and its territorial limits?

A. The Consolidated Motor Lines is a common carrier of general commodities, with the usual exceptions. Its general territory is a sort of a triangle between Boston, Buffalo, and Philadelphia and most of the intermediate points.

Q. Now, what is the status of its certificate with the Interstate Commerce Commission?

A. It received its final certificate. It was granted 5-26-41, MC-18159.

Q. And that contains a complete description of the route and operating rights of the Consolidated?

A. That is right.

Q. Now, in addition to its interstate rights, would you state generally for the record the intrastate rights?

A. The intrastate rights in Connecticut blanket the complete State; in Massachusetts, approximately 85 percent.

367 It does not have intrastate rights out in what is known as the Cape territory and the northwestern section. It has some rights in Rhode Island, close and adjacent to Providence, and has rights in New York State, more or less on the direct route between Buffalo and Albany, thence south into New York City, and, on the other hand, into Binghamton and the surrounding towns there. I would say we probably blanket the State about 70 percent.

Q. Do you have your tonnage figures for the year 1940 and for the six months of 1941?

A. In 1940 we handled 900,223,467 pounds. In the first six months—well, it is not six months, it is only six periods, up to June 15th, we handled 504,325,721 pounds.

Q. At that rate, what do you estimate your total tonnage for 1941?

A. About a little over one billion pounds.

Q. Of this tonnage, about what percentage would you say would be interchange freight?

A. About 20 percent.

Q. Roughly, 200,000,000 pounds?

A. About that.

Q. Per year.

A. That is right.

368 Q. And of that interchange freight, how much, in your opinion, is in interchange with the members of this proposed unification?

A. About one-half.



Q. Now, if the application be approved, do you see any diversion of interchange freight from carriers not in the proposed unification to carry it to carriers in the proposed unification?

A. There would not be too much diversion; there would be some. The reason why there would not be too much is that where we connect with the carriers in the proposed unification, they now receive by far the greatest part of that tonnage. In addition, whatever other portion they do not receive, a good portion of that is on shipper's routing—always have, and presumably always will.

Q. State in your own words what benefits you feel will result from this proposed unification with regard to this interchanged freight.

A. The greatest benefit that would result is the saving of elapsed time between origin and destination and the elimination of the handling of merchandise, which tends very much to create what we call "O. S. and D.'s"—over shorts and damages. I can best explain it, probably, with a specific example.

At the present time, we are large customers of the Horton Motor Lines at New York City, for instance. We now pick up the freight in New England, much of it in Springfield, Mass.

369 It is assembled, and much of it in Bridgeport, and send it into New York City, and arriving there some time the following morning, and delivery is made to the Horton Motor Lines some time during the day. In most instances we try to make that at his convenience, which would probably be late in the forenoon or some particular time that the management may get together on that would be advantageous to them. They accept the freight then and carry it on to destination. Under this arrangement it would be possible and most feasible to accumulate that merchandise for direct loading into the southern points. The vehicle could leave New England on schedules that could be worked out by the operating departments; so that there would be practically no elapsed time at the interchange point. Whether that would remain at New York or some other point would be an operating problem.

Q. What can you tell us of the present load factor of Consolidated Motor Lines, briefly?

A. The load factor of Consolidated at the present time is 18,500 pounds, or about 84 percent.

Q. Now, will you tell us, what, in your opinion, would be the effect of the proposed unification on the load factor?

A. The load factor should be increased because of the consolidation of particularly Moran and McCarthy, where we lay each other's operations in various territories. Probably I can best explain by a specific example.

370 For instance, in southeastern Massachusetts, we operate into the territory which is known in our neck of the woods as the McCarthy territory. Our load factors are light. I am sure that our merchandise would help to increase his, and would take away from our total these light load factors, which would make an average of a heavier load factor throughout the system. That is only one example. There may be a half a dozen others throughout the system.

Q. And, conversely, the territory in New England served by Consolidated, in which the McCarthy business is light—

A. The same thing will apply in southern Connecticut to us that applies in southeastern Massachusetts to McCarthy.

Q. Will you now explain the maintenance set-up of Consolidated Motor Lines, briefly?

A. The Consolidated Motor Lines operate under a preventive maintenance schedule. Its vehicles are scheduled for periodical inspection into the various shops, the principal of which in the East is located at Hartford, and in the western division at Geneva, N. Y. The equipment in these shops, and particularly Hartford, is of the finest and most up-to-date that we have been able to procure. Our preventive maintenance program has proven to us in the time that it has been in effect, which is only two or three years,

371 that it has saved us over this time considerable costs, and the most important, has eliminated, according to the last figures that I analyzed, about 65 percent of what we call road delays, as compared with what they were previously. We have, for instance, in our shops at Hartford a dynamometer large enough to take any commercial vehicle. That particular instrument has saved for us some twenty to thirty thousand dollars in fuel consumption for the first six months of this year.

Exam. BAKER: Will you explain for the record just what a dynamometer is, Mr. Arbour?

The WITNESS. A dynamometer is—and I am going to explain it as I understand it—a piece of machinery, whereby the vehicle is tested in the shop under the same stress as it would be on the highway, going up hill or on a level road. By the readings that are made possible, a man operating the dynamometer can tell when the motor is functioning at its best, showing that it will operate to the utmost efficiency, without going out on the highway, and that is done by two rollers that are set into the ground, in which there is water pressure set against it, and the pressure against the tires is equal—you can make it equal to any percent grade you wish or any pulling power. Then they set their motor at the revolutions that the motor should travel and see that it reaches its utmost perfection. We know that in over-hill cases, where the human element

372 is pronounced, the job is as nearly perfect as could be produced. We have been able to increase its efficiency as high as 23 percent through the use of dynamometer analysis.

By Mr. JOSELOFF:

Q. Have you explained for the record the safety patrol system of Consolidated, Mr. Arbour?

A. I have. Safety patrol system is more closely tied up with the insurance feature of our organization. We are self-insurers, and have been, I believe, since 1935 or 1936—1934.

Q. Which is it?

A. 1934; and in order to get the proper experience that is necessary for a successful self-insurance program, we organized our safety work in all of its phases, one of those being the safety patrol, which operates over the highways on which our vehicles travel. Most of these patrol cars operate at night, because the most of our operation, that is, the over-the-road operation in our territory is all at night. They handle everything that might happen to a vehicle between terminals, such as covering accidents, policing the driver for reckless driving, and so forth, although their intention is to be helpful to the drivers and the personnel, and also one of their prime functions is in the case of road failure, to get that vehicle moving as quickly as it is humanly possible; or at least take it off the highway, where it immediately becomes a hazard when it is stopped on the highway. That patrol covers every foot of our operation.

Q. Our maintenance set-up with safety patrol work comes under the general heading, I believe, of scientific preventive  
373 maintenance; is that correct, Mr. Arbour?

A. That is right.

Q. And that has been in force on an extensive scale with your company for how long a period of time, would you say?

A. Well, we attempted to put this preventive maintenance in about 3 years ago, but it had not become really effective until about a year—I mean we have reached the point just where we were getting the real benefits out of it.

Q. Will you state what those benefits were, in brief general terms, and then give us your views as to whether they could be extended to other members of the proposed unification?

A. Well, I believe I have outlined what the benefits of preventive maintenance are to Consolidated, and I think the record will show that our maintenance costs—naturally, the fleet is not getting any younger—have been very favorable in comparison with other operators.

Q. I mean from the standpoint of safety, particularly, on the highway.

A. This patrol could just as easily handle the operations of the other member companies within the area that we serve at practically no expansion of the patrol, or very little. As to its benefits, I am a firm believer in this theory of preventive maintenance, because of the results that Consolidated has shown, and I think it can and should be extended to this unification, if it becomes a reality.

374 Q. Will you tell us something about the situation of Consolidated with regard to its terminal facilities, from the standpoint of adequacy and need for future expansion?

A. Its terminal facilities have been improved somewhat, but they are needed in many locations. There is now under construction a new terminal site in Philadelphia. There is started, or about to be started, construction of new terminals in Albany and Waterbury. It needs a new terminal in Syracuse, and with those terminals it would be in pretty good shape, insofar as terminals are concerned, with the possible exception that I did not mention of New Haven, where we are on a month-to-month basis, and in Binghamton, which is a small operation.

Q. Do you see any economies that can be effected in the reduction of general overhead expense and terminals, if the proposed unification be approved?

A. I am sure it can be. I think the best example that we have to offer is that by the opening of a new terminal in Boston, Mass., which is a tremendously heavy tonnage point, for Consolidated, where our facilities were probably the worst that could possibly be examined, we were able to reduce the handling cost there about 21½ cents a hundred. However, that is the extreme, but it is an example of what may be accomplished with proper facilities, and, in addition to that reduction, the service—I can't begin to tell you the percentage that it was improved, because, before, our

375 service was real bad, due to the congestion in that particular terminal area.

Q. You heard the testimony of Mr. Clay of Transport, Inc., and Mr. Brock of Southeastern, did you, Mr. Arbour?

A. I did.

Q. And particularly with reference to their testimony on the adequacy of their terminals, in your opinion, from the experience of Consolidated, could similar benefits be effected in the territory served by those companies in some such manner as Consolidated has already benefited?

A. I am sure they could.

Q. Will you explain now the direct wire service of Consolidated?

A. At the present time Consolidated has its own leased telephone wires, extending from Boston to Newark and all intermediate terminals, with the exception of Providence, Norwich, and

Pittsfield, which terminals are tied in for various periods during the day. It has its own leased wires in New York State between Geneva and Utica and Syracuse. It then has a tied-in wire two periods a day between Utica and Springfield. In other words, Albany is tied in, and similarly between Newark and Philadelphia, I believe. Those are the leased wires that we have.

Q. What has the advantage been to Consolidated of this direct wire service?

376 A. Well, the best answer to that is that I do not know how we could get along without it. At the present time, we are able to handle our operating problems on the moment. Without waiting for toll calls, we handle our own ring system throughout on these wires, so that we are able to pick up and talk to whichever terminal we wish, immediately; but the most important has been the tracing of shipments and the information that shippers should receive from us as to the movement of their freight while en route, on many occasions. It also is extremely beneficial in our internal operations, such as the movement of parts to the various stations on emergency matters, and, in general, is the life-line of the operating department.

Q. Do you think it would be difficult to operate with a central dispatcher system without the "L. D." service?

A. I would be practically impossible.

Q. Now, I believe the Horton Motor Lines has a similar direct wire service, Mr. Arbour. Do you know that of your own knowledge?

A. They do.

Q. And are there any other companies in the proposed unification that have that system?

A. I have not checked with many of them, but I know that the McCarthy System has, and I believe Moran has. I do not know whether the others have it or not.

377 Q. In any event, do you think this system of direct communication, with the benefits that you have just stated, to the companies, and to the public, could be extended to cover the entire territory served by the proposed unification?

A. I am sure it could be.

Q. And with what results?

A. Well, I think it would hasten the information that is necessary to clear up any question as to the freight transportation, to answer intelligently and quickly a shipper's request as to freight in transit, and to handle any operating problem, particularly as to the dispatching, that would be necessary, and I think would eliminate many routing wires that there are in the system today.

Q. Would you say generally the beneficial results to Consolidated apply over the entire territory?



A. That is right.

Q. Will you explain the self-insurance plan of Consolidated?

A. Consolidated's insurance program is one of partial self-insurance. It is self-insurer on the first \$10,000 per person and \$10,000 per accident, and it covers excess amounts up to a total of \$100,000 per person and \$300,000 per accident. It is self-insured up to \$500,000 on property damage, and carries excess up to \$50,000. The primary liability is secured by surety bonds, which are on file with the Interstate Commerce Commission.

378 It carries fire, theft, riot, civil commotion for all equipment, in an insurance company. However, that is subject to a \$500 deductible collision feature, and the collision insurance only applies to units whose value is in excess of \$1,500. It carries general cargo insurance, including sabotage, et cetera, to the extent of \$75,000 per truck and \$200,000 per terminal, with the exception of two locations, where the terminal coverage goes as high as, I think, either four or five hundred thousand dollars.

The workmen's compensation for the States of New York, New Jersey, and Pennsylvania is in an insurance company. We are self-insured in Connecticut, Massachusetts, and Rhode Island up to \$10,000, and excess insurance is purchased up to \$100,000. We purchase fire and theft insurance on our personal property and on the effects of the various executive offices and terminals throughout the system.

Q. What has been the effect of the policy of self-insurance, insofar as safety and number of accidents are concerned?

A. The self-insurance program, since its beginning, has reduced the accident frequency by over 45 percent. At the time we went into this program I think we had a debit rating of some 25 or 30 percent. Today I have a bona fide offer from substantial  
379 insurance companies to write that insurance at about a 60 to 70 percent credit rating. So that speaks as to the results, and those results were only accomplished through this very elaborate and complete safety program, and also by the personnel realizing very definitely that accident payments now come out of the—well, speaking in our language, the boss' pocket, and not out of the insurance company. They have been very cooperative, and they have done a real good job.

Q. Do you think an extension of this plan would be feasible for other companies in the proposed unification?

A. To my mind, there is no question about it. I believe this program could be extended throughout the unification. I know that in our territory, our immediate territory, it could be extended at a great saving to the companies combined, because most of the work we do would be beneficial to the other companies within the area that operate in, at practically no additional cost.

Q. Mr. Arbour, in connection with this safety work and your terminal situation, and so forth, is it not a fact that at the present time some of the vehicles of Consolidated and other companies in the proposed unification come into New York City proper?

A. That is right.

Q. Now, if the proposed unification were to be approved, could there be an avoidance of many units coming into the congested metropolitan area by the use of the George Washington Bridge, or some other river crossing, and the utilization of other terminals outside the congested area?

380 A. Well, I tried to convey that impression in my former statement, and gave an example, where I stated that the vehicle could go right on to destination, either for exchange at New York or at some other location. My own impression is that vehicles loaded in New England for points beyond should never go through the congested traffic area of New York City. They should go around that area, and the exchange could be made either at Newark or some other point—at Philadelphia or something of that sort. That, by the way, would relieve the congestion at our terminals tremendously in those metropolitan areas, where we really need relief.

Q. Mr. Arbour, the existing contract of the stockholders of Consolidated with Associated Transport, 100 percent of the stock is to be exchanged?

A. That is right.

Q. In your opinion, is there a need for additional working capital for Consolidated Motor Lines?

A. I believe that Consolidated should, in order to be more stable and financially capable of effecting all economies, increase its working capital by about \$200,000. That \$200,000 does not include the purchase of any equipment which will be necessary, and, 381 as a matter of fact, in process of negotiation at this time.

I am talking simply now of working funds. There might be included, to a small degree, improvements at terminal sites—not the building of complete terminals. By "improvements," I have in mind several terminals now where we expect to spend \$10,000 or \$15,000 in yard improvements, but not the building of new terminals. That would put us in a position so that we would be prepared at all times to meet our real liabilities on a moment's notice and protect us against any drop in business, and so that we can carry on.

Q. Now, Mr. Arbour, with regard to the flexibility of equipment, I would like to have you comment on that, because you have had personal experience with the flexibility of equipment, particularly in emergencies. Would you please tell us your ex-

perience in the hurricane of September 21, 1938, keeping in mind the benefits of this proposed unification in similar emergencies?

A. Well, referring particularly to that hurricane period, when New England was hit very hard, it was impossible to handle the emergency with all of the motor vehicles that were available. Even some of our good friends loaned us some vehicles to help us out. If this system had been in operation, I am sure that we could have mustered many additional units to help in that emergency. Furthermore, I do not think we have to go back that far. We have been confronted, and are from time

382 to time today, in our area, with national defense transportation, where we have been unable to move the merchandise in the quantity that the authorities wished to have us move, and I know that they were unable to move it with their facilities, because they were not available. I now have in mind in particular the movement of gun stocks, where, by all available facilities, they were not able to move over 20 percent of their requirements. Had this unification been in operation, I feel certain that we could have gotten units pretty fast to help in that situation, by everybody squeezing a little bit to help the other fellow out.

Q. Will you now comment on the probable effect that the proposed unification would have on consolidation in the matter of pick-up and delivery?

A. It would help that situation tremendously. I think we can agree with Mr. Horton that in many of the metropolitan areas the real answer is to have inbound and terminal terminals, and stop this cluttering up of freight at those terminal areas, so that we can really move the freight without that congestion, and if we had these terminal facilities; the proper distribution set-up and the proper pick-up set-up inbound, the deliveries would be made much faster than they are today, and in some of the metropolitan areas, many of us, I am sure, are not able to complete our deliveries within the working day, and we do not have the facilities to operate two terminals in the one city, I can assure you that.

383 Q. Now, Mr. Arbour, you testified that throughout the previous history of Consolidated there have been mergers and acquisitions.

A. That is right.

Q. On the basis of your knowledge of the trucking business, and with particular reference to your experience in it relative to mergers and acquisitions, I ask you whether, in your opinion, the proposed unification would decrease the personnel or the number of the employees of the members of the proposed group?

A. My experience in mergers and consolidations, which have never been as large as this one, but which have been numerous,

definitely shows that employment of personnel has increased in every instance. The best possible example of that is the last merger, which became effective on the 17th day of July 1937, which was in a period before the defense boom. Up to March 23, 1940, the personnel had increased in that particular case by 23.6 percent.

Exam. BAKER. Which particular merger or acquisition are you referring to now, Mr. Arbour?

The WITNESS. The Simpson-Thompson-Ralph Express merger, at the time they consolidated. That became effective on the 12th of July, but I have the week ending the 17th here.

By Mr. JOSELOFF:

384 Q. Will you state for the record the number of employees on the 17th of July, and on the other date that you mentioned?

A. We had 954 employees on the 17th of July 1937. On the 3d of March 1940, we had 1,179 employees. On August 2, 1941, we had 1,374 employees.

Q. Now, Mr. Arbour—

A. These are regular employees, by the way. We in our business have what we call "spares," to take care of additional peaks, etcetera, but these are regular pay roll employees.

Q. And that figure of 954 employees on July 17th was after the acquisition that we have been talking about?

A. That is right.

Q. Will you please give us your opinion as to what effect, if any, the proposed unification will have on competition in New England?

A. In my honest opinion, it will have absolutely no effect, because, in New England, there is so much competition that the unification of these few lines certainly won't even be noticed.

Q. Mr. Arbour, I show you a paper headed "Representative List of Motor Carriers Serving the Same Territory as Consolidated Motor Lines, Inc., and McCarthy Freight System, Inc., in Massachusetts, Rhode Island, Connecticut, Metropolitan New York, Northern New Jersey, and Albany, N.Y., Capitol District," and ask you whether or not this was prepared under

385 your direction?

A. It was.

Mr. JOSELOFF. May I have that marked for identification, please?

Exam. BAKER. The document described will be marked Applicant's Exhibit No. 3 for identification.

(Exhibit No. 3, Witness Arbour, marked for identification.)

By Mr. JOSELOFF:

Q. In reference to this exhibit, Mr. Arbour, those companies that have a star appearing before their names are class I motor carriers?

A. That is right. I believe there are 56 of them on that exhibit.

Q. And the total number—

A. 189, I believe.

Q. Now, you will notice that this exhibit is headed a "Representative List."

A. That is right.

Q. Are there other carriers than those set forth on this list?

A. Hundreds of them.

Q. And this list has been compiled from your years of knowledge and experience in the motor carrier industry in this territory, together with check-ups of the files of the Interstate Commerce Commission?

A. That is right.

386 Q. Is it a true and correct list, to the best of your knowledge, information, and believe?

A: It is.

Mr. JOSELOFF. I would like to offer this in evidence, if the Examiner please.

Exam. BAKER. If there is no objection, the document marked for identification as Applicant's Exhibit No. 3 will be received in evidence.

(Exhibit No. 3, Witness Arbour, received in evidence.)

By Mr. JOSELOFF:

Q. Now, Mr. Arbour, with reference to remaining competition in New England, could you state for the record the revenues of a few of the larger class I carriers remaining in the New England territory?

A. Well, one of our largest competitors in New England is the Adley Express, whose volume is 1,750,000. These are 1940 figures.

Q. And those figures have been obtained from what source, Mr. Arbour?

A. From the records in the Interstate Commerce Commission. The next largest system in New England proper is, I believe, the Seaboard Freight Lines, about 1,725,000.

Exam. BAKER. Is that a subsidiary?

The WITNESS. That is a subsidiary of the Keeshin. I don't know what their full correct name is.

387 Mr. JOSELOFF. Keeshin Freight Lines, Mr. Arbour.

The WITNESS. Keeshin Freight Lines. By the way, both of those competitors blanket our entire operation in the Eastern Division, which is known to us as that portion covering



New York City, Connecticut, Rhode Island, and Massachusetts, up to and including the Capitol District at Albany.

By Mr. JOSELOFF:

Q. While we are on that point, is it your understanding that when the witness for the Moran Transportation Lines takes the stand, the competition so far as New York State is concerned will be developed?

A. That is right, with the possible exception that I have a few figures on that district that I would like to have included in the record, if it is agreeable.

Q. Certainly.

A. The New England Transportation Company, which is a company owned by or a subsidiary—I don't know which you would call it—of the New Haven Railroad, volume \$1,575,000, and M. & M. Transportation Company, \$1,461,000. I have many others here, but those are the largest in New England, complete systems. The M. & M. is not as complete as the other two I mentioned, and which parallel our lines practically in their entirety. I would like to state that we have similar information here for some of the companies that parallel our lines in New York State.

388 Q. I would suggest that you put that information into the record, so long as you have it before you, Mr. Arbour.

A. Liberty Motor Freight Lines, \$1,900,000. And I want to state for the record that the Seaboard Freight Lines, whose volume I read earlier, also parallels our lines completely in New York State.

Mr. WIPRUD. May I inquire as to the Liberty what the figure was there?

The WITNESS. \$1,918,000.

Mr. WIPRUD. I was wondering if that was known as a class I carrier.

The WITNESS. No; they are a New York State operation.

Mr. WIPRUD. Oh, I see.

The WITNESS. It will be covered by Mr. Altwater, but I have figures here, and they do parallel our operation in New York State.

Mr. WIPRUD. They are an interstate carrier?

The WITNESS. Oh, yes.

Mr. WIPRUD. You said the asterisk denotes a class I motor carrier. There is no asterisk before the Liberty Motor Freight Line, and I was wondering about it.

Mr. SULLIVAN. Mr. Wiprud, you will notice that that exhibit of Mr. Arbour's deals with New England. There will be a similar exhibit for New York State. He runs in New England and New

York State. He is apparently moving into New York, 389 too.

Mr. WIPRUD. Oh; I see.

Exam. BAKER. To clarify that point, Mr. Arbour, is Liberty Motor Lines, whose address is Secaucus, N. J., the same company which you have listed as having operating revenues of \$1,800,000?

The WITNESS. Yes. It should have been marked. As a fact, I know that they are a class I carrier, because, in having the exhibit checked yesterday, I have some check marks here, and although the asterisk is not on the copy offered for the record, the check mark shows that it is a class I carrier.

Exam. BAKER. You may proceed.

By Mr. JOSELOFF:

Q. Will you continue, Mr. Arbour, please.

A. I only wanted to add, that insofar as New York State is concerned, we are also paralleling that territory by the Red Star Lines, and almost completely by the Niagara Freight Lines. The information as to their volume, etcetera, I am sure Mr. Altwater, of the Moran Company, will give you.

Q. Have you prepared a summary of representative common carriers, operating between Boston, Mass., and various New England points, setting forth the number of carriers and the operating revenues?

A. I have.

Q. Are they all class I carriers?

390 A. They are.

Q. Will you please state what your examination has revealed, please?

A. Well, for instance, between Boston and North Adams, we have 18 class I carriers, whose total volume is \$7,755,369. Between Boston and Springfield, we have 42 class I carriers, whose total volume is \$19,365,102. In Providence, we have 45 class I carriers, that is, between Boston and Providence, whose total volume is \$20,409,477.

From Boston to New London, we have 30 class I carriers, whose total volume is \$16,231,272. Between Boston and Hartford, we have 37 class I carriers, whose total volume is \$18,478,183. Between Boston and New Haven, we have 37 class I carriers whose total volume is \$18,669,856. Between Boston and New York City, we have 36 class A carriers, whose total volume is \$18,805,839. Boston to Albany, we have 18 class A carriers—

Exam. BAKER. You mean class I, do you not?

The WITNESS. Class I. Whose total volume is \$10,512,350. Between Boston and Philadelphia we have 16 class I carriers, whose

total volume is \$11,901,652. Between Boston and Haverhill, we have 24 class I carriers, whose total volume is \$9,183,468.

**Exam. BAKER.** In connection with those figures, Mr. Arbour, are they based on the 1939 or 1940 volume?

**The WITNESS.** 1940 revenue.

**Exam. BAKER.** Can that information be furnished in exhibit form, naming the particular carriers that make up the totals that you have indicated?

**Mr. JOSELOFF.** Yes; we can furnish that, if you desire it, Mr. Examiner. Of course, that is all taken from the records on file with the Interstate Commerce Commission.

**Exam. BAKER.** I believe the Commission should know the carriers which you have in mind as making up those respective totals; so I will request that there be furnished, in exhibit form, a statement showing this information which Mr. Arbour has given orally, and, in addition, showing the names of the carriers which make up the total figures that he gave.

**Mr. JOSELOFF.** Well, Mr. Examiner, you have in mind the names of the carriers operating between these points that Mr. Arbour just gave?

**Exam. BAKER.** Yes. For instance, he stated 19 class I carriers between Boston and a certain point. The exhibit should list the 19 carriers and show the volume of each.

**Mr. JOSELOFF.** Very well.

**Exam. BAKER.** Can that be furnished during the course of the hearing or would you prefer to furnish it subsequently?

392 **Mr. JOSELOFF.** We will try to furnish it during the course of the hearing, if we possibly can; at least before the hearing is over.

**Exam. BAKER.** Will you such effort, and if you are not able to do that, call it to my attention before the hearing is closed?

**Mr. JOSELOFF.** We will be glad to.

**Exam. BAKER.** Copies should, of course, be furnished to opposing counsel.

**By Mr. JOSELOFF:**

**Q.** Mr. Arbour, in listening to the wealth of motor carrier competition to which you have just testified remaining in New England, particularly, is there other competition by railroads and private carriers—private trucks?

**A.** Our entire system is flanked by the rail system in its entirety; in some locations by several. Our type of operation, particularly in New England, is short-haul operation. There are many private vehicles, and it lends itself to private operation to a great extent. In addition to these that I have furnished here, as I stated previ-

ously, there are literally thousands of others operating over that territory.

Q. In addition to that, is there competition by water?

A. There is, in connection with several of the main line routes.

393 Q. Mr. Arboff, will you please state for the record the reasons which you have, and other stockholders of Consolidated, for joining in this proposed unification?

A. Well, the most important reason of all is the stability. I believe that with this unification we will create for the stockholders of Consolidated a stability that can only be created through such a program. It will protect them, in my opinion, to a much greater extent than we can at the present time, in case of a recession, which history shows has always followed a boom. It gives them the benefit of what I consider the finest and best operating heads in the trucking industry today. In addition to that, it will put at our disposal the various benefits that were mentioned in my testimony, the best of which is working capital. It will give us an opportunity to effect savings.

At this time, I do not feel that we can deplete our working capital because, I think if something happened, I would not be in a position to stand a shock. By that I mean oftentimes we have been in a position to purchase commodities, supplies, et cetera, but I just could not afford to do it. It had to move quickly. I, and particularly my stockholders, believe that when eight companies of this type can become one by the exchange of stock, we have a nucleus of one of the strongest and finest organizations  
394 that we can possibly get together in this industry, and for those reasons we are very happy to be a part of this unification.

Q. What is your opinion as to the manner and time and method of effectuating this proposed consolidation, if approval of the Commission be granted?

A. From my experience, I know that it would be a very sad mistake if we attempted, or, for some reason, had to make this consolidation or merger overnight. I know very definitely that that can only be accomplished in a way to effect the utmost economy and to improve the facilities of the existing companies by being handled step by step. I believe that may be handled after a period of time and by a divisional operation, but probably for the good of the unification, if we handled this cautiously I am sure it will not take too long a period. My experience has been that in the southern merger, which is a fair-sized merger in comparison to ourselves, we did not get complete unification and real operating unification for a period of one year, and then it left something to be completed.

Q. In the meantime, do you see the holding company feature of this proposed plan, pending final consolidation, as a practical means of accomplishing divisional operation?

A. There is no question about that. There are many items that can be handled immediately. The most important items  
395 can be done immediately. My reference to delay was more to the operating end, the practical operating end.

Mr. JOSELOFF. Those are all the questions that I have.

Exam. BAKER. Before we begin the cross-examination, we will take a recess for 15 minutes.

(There was a short recess taken.)

Exam. BAKER. Come to order. Is there any cross-examination of Mr. Arbour?

Mr. TOBIN. Yes; Mr. Arbour. I have a few questions.

Cross-examination by Mr. TOBIN:

Q. Mr. Arbour, in connection with this merger of Simpson, what were the names of the companies that were merged at that time?

A. Simpson Transportation, Thompson Transportation, and Ralph's Motor Transportation.

Q. Ralph's?

A. Ralph's, R-a-l-p-h-s.

Q. Do you know how many employees each one of those companies had before the merger?

A. I do not know how many each had, but I know that we took  
in 460 at the time.

Q. 460?

A. That is right.

Q. 460 from each one of them, or from all of them?

A. No, no; the total.

396 Q. How many did you have before the merger?

A. That would be the difference between 460 and 954—approximately 500.

Q. When you took in 460, you did not know how many they had?

A. What do you mean?

Q. You did not know the total?

A. I do not know how many Simpson, Thompson, and Ralph had. I have not that here, but I have the total number—460 employees taken in over the merger, as of September 12, 1937, which was the date the acquisition was made final.

Q. That total, then, was how many?

A. 954.

Q. You mentioned the emergencies in New England, and you illustrated by the hurricane.

A. That is right.



Q. How many times have you had hurricanes there?

A. Well, we had a hurricane once; we had floods on two occasions; we have been through catastrophes in that territory.

Mr. TOBIN. That is all I have.

By Mr. WIPRUD:

Q. Can you give in percentages and the routes of your line that parallels the line of McCarthy Freight System—just roughly?

A. I would know them as to route miles. I could say this, that the McCarthy Freight System parallels about 90 percent of our eastern operation and none of our western operation.

397 Q. And what percentage is that of your whole operation?

A. I think I can give you a fair figure on that. If I had the June 15th statement I could give you a pretty fair percentage on that. Our western operation is approximately 25 percent of our total operation. The East is 75, and the West is 25.

Q. Then, of the 75 percent, as I understand it, McCarthy parallels 90 percent of that?

A. I would say close to that.

Q. Now, what was—

A. Now, wait a minute. In miles, not in value.

Q. In miles.

A. That is right.

Q. Now, could you give us the same figures; that is, the same applicable figure to the routes of Moran? What percentage of your operation—

A. Twenty-five percent. They parallel all of our western operation, while they do not parallel any of our eastern operations.

Q. Do they have operations paralleling any other carriers involved in this unification?

A. Well, we parallel between New York and Philadelphia. The map shows we parallel the Horton Motor Lines.

Mr. JOSELOFF. And also Barnwell Transportation Company.

Exam. BAKER. Did you answer Mr. Joseloff's observation?

398 The WITNESS. I am just finding out. That is right.

By Mr. WIPRUD:

Q. Then, substantially all of your operations parallel operations of other carriers involved in this unification?

A. That is substantially correct; yes, sir.

Q. Is it a fact that in so far as this proposed unification is concerned, it is more in the nature of a merger of parallel operating lines than it is of an end-to-end unification? I am speaking of your company.

A. No; this is by far not a merger of parallel motor lines. It is more of an end-to-end proposition.

Q. Well, I am speaking now so far as your operations are concerned.

A. In relation to the operation after the unification?

Q. That is right.

A. By far, an end-to-end, as against parallel.

Q. Well, all of these parallel operations will be merged into one operation.

A. That is right.

Q. Is there substantial competition between the carriers that parallel your route at the present time?

A. I don't quite understand that. Just what do you mean?

Q. Well, is there—

A. Competition for us, do you mean, or—

Q. Substantial competition between you and these other  
399 carriers.

A. Oh, yes.

Q. That parallel your lines.

A. Yes.

Q. At the present time.

A. Yes; definitely so.

Q. The Examiner has asked you, Mr. Arbour, to submit an exhibit showing the other carriers that operate between given points in New England, as well as their revenue, for the year 1940. In order to afford a comparison, would it be possible for you to also add to that exhibit the 1940 revenue of the unified line operating between those points?

Exam. BAKER. Mr. Wiprud, is not all of that in the record?

Mr. WIPRUD. Well, as I understood the statement, Mr. Examiner, one of the difficulties in furnishing that is the amount of business that was handled by the carriers involved in the unification was not obtainable. If it is in the record, of course, I see no necessity for it. In other words, does the record show the 1940 revenue of the unified lines between such points as Boston and Springfield?

Exam. BAKER. My request for the exhibit did not contemplate that information should be shown as to the amount of revenues derived by these competing carriers between certain points.  
400 The revenues would be the total operating revenues of those companies.

Mr. WIPRUD. In other words, it would merely list the so-called independent companies and the total revenues of those companies?

Exam. BAKER. That is correct.

Mr. WIPRUD. Now, in order to afford a comparison as to the extent of the elimination of competition, we should have the revenues of the unified line; should we not?

**Exam. BAKER.** The point I was making was that the total operating revenues of the companies involved in this unification are already in the record.

**Mr. WIPRUD.** Well, I notice it was not between these points, so as to afford a comparison.

**Exam. BAKER.** Well, the other information is not between those points.

**Mr. WIPRUD.** Maybe I misunderstood it, Mr. Examiner, but this witness gave, as I understood it, the 1940 revenue of 18 class I carriers between Boston and North Adams, \$7,755,369, as indicating the competition that would remain between those two points.

Now, if it were possible, to have a comparative figure of the 1940 revenue of the unified lines operating between those two points, then we would have a comparison as to the effect of this merger upon that competition.

401 **Exam BAKER.** That would merely mean the total operating revenues of McCarthy and Consolidated; would it not?

**Mr. WIPRUD.** Is it in the record as between those two points? Is it broken down?

**Exam. BAKER.** No; it is not broken down. The other figures are not broken down as to operations between those two points.

**Mr. WIPRUD.** Then, I misunderstood the testimony of the witness, and I will ask the witness now.

By Mr. WIPRUD:

**Q.** In giving the 1940 revenue of the 18 class I carriers between Boston and North Adams, does that represent the revenue of business transported between Boston and North Adams?

**A.** It does not.

**Q.** What does it represent?

**A.** It is the volume of the carriers in this list who have operating rights and offer service between Boston and North Adams.

**Exam. BAKER.** As I understand it, Mr. Wiprud, those figures were given as an index to the size of the carriers rather than to show the proportion of the business handled by those carriers between those points.

**Mr. WIPRUD.** Yes.

Now, may I ask the witness another question on that.

By Mr. WIPRUD:

**Q.** Following that you gave the 1940 revenue of 42 class I carriers between Boston and Springfield.

**A.** That is right.

402 **Q.** Is it possible that the figure that you gave as the 1940 revenue of those 42 carriers may be a duplication of the fig-

ure you gave for the 18 class I carriers between Boston and North Adams?

A. It definitely was, in some cases.

Q. That clears up the point.

A. Some that operate between Boston and Springfield do not operate between Boston and North Adams. That is right.

Q. Let me ask you this, Mr. Arbour: Does the Arrow Transportation parallel any of your lines?

A. I do not believe we are in competition with Arrow Transportation; at least I did not think we were, unless it is Newark to Philadelphia. I did not think they went in there.

Mr. SULLIVAN. Arrow does not go into Philadelphia.

The WITNESS. I don't believe they do.

By Mr. WIPRUD:

Q. They do not parallel—

A. No; I don't believe they do.

Q. As I understand your testimony, at the present time your business is a short-haul business.

A. Yes; up in New England we are all known as short-line carriers.

Q. And this proposed unification is largely for the purpose of making possible long-haul motor truck operations.

A. No, sir; it is not.

Q. That is one of the features, is it not?

403 A. The service we offer to our shipping public on the long haul is a very small part of our business, an extremely small part of our business, and that would be improved; the facilities would be improved for moving it in a shorter space of time.

Q. Have you an opinion as to what percentage of the business of the unified lines might be long haul?

A. What would you consider "long haul"?

Q. Well, what do you consider "long haul"?

A. My opinion of long haul is anything over the length of our system, which is 350 miles or so.

Q. Three hundred and fifty miles?

A. Or 400.

Q. Well, what percentage would you say of the business of the unified lines would be long-haul business?

A. Let me be sure that I understand you. Business that now goes to members of the unification on long haul; is that what you mean—if we have others that are not in the unification on long haul also?

Q. You heard the previous testimony about the long-haul business.

A. That is right.

Q. Which would result from this unification.

A. Yes.

Q. In your opinion, what proportion of the business  
404 would be long haul if the unification is approved?

A. I would say it would remain as it is—10 percent, the way it is now.

Mr. JOSELOFF. That 10 percent, Mr. Arbour, is as far as your lines are concerned? You say "10 percent, the way it is now."

The WITNESS. That is right.

Mr. JOSELOFF. I think Mr. Wiprud's question was directed to the total business; is that right?

Mr. WIPRUD. Of the unified lines.

The WITNESS. I have not any knowledge on that. I am in no position to know that.

By Mr. WIPRUD:

Q. You think it will be somewhat increased over the long-haul business that you experience in your operation?

A. I assume, with better facilities and quicker handling it will increase it very definitely.

Q. What are the advantages which would tend to increase that long-haul business if unification were put into effect, over the existing situation?

A. Better service.

Q. And that better service would be brought about by what?

A. Loading directly from the New England points to points of the other members in the unification. In many cases, that  
405 would be accomplished and would save time. In service I include not only transportation, but information that we would get better and quicker information, and we would get faster service to the point of destination.

Q. Would you say that the elimination of interchange would have anything to do with it?

A. Well, it would help materially; yes.

Q. Assuming a movement, Mr. Arbour, from your territory into the Carolinas, in your opinion would it be feasible for a truck or a trailer to move that entire distance?

A. Yes; it would be very feasible for a trailer to move it. A truck would also be able to move it, but it would mean an exchange of drivers at certain intermediate points. Probably the practical operation would be to have the trailer exchange power units at various locations en route.

Q. In other words, the most practical way would be to deliver it by trailer.

A. Well, practically our entire over-the-road business is moved a hundred percent by trailer.



Q. A hundred percent by trailer?

A. Yes.

Q. What effect do weight restrictions in various States have upon such a movement?

A. I am not too familiar with the southern weight restrictions. I know in New England we are uniform, but I do not know what the other weight restrictions are. I do not think I am  
406 competition to answer that.

Q. You do know that they vary in the various States.

A. I heard they do; but what they are I do not know.

Q. And the same is true of the length of vehicle to be transported.

A. I assume that is correct; yes, sir.

Q. Would you know whether or not the license requirements on such an assumed movement on the trailers would involve an allowance that might offset the possible saving?

A. At the present time—and I speak from experience—you can exchange trailers. The license plates are governed by the plates on the power unit.

Q. You would not know what those costs might be?

A. There would not be any. Probably I have not made myself clear.

Q. No. State that again.

A. I say there would not be any additional cost because the trailer is registered and the power unit governs the registration.

In other words, to give an example, we take a Massachusetts registered trailer and turn that over to an operator at New York for Philadelphia, we will say, and this we have done—I know it is a fact—we can hook that on to a Pennsylvania registered tractor and take it right into Pennsylvania, with the same Massachusetts tag.

407 Q. Is that the way the movement is handled now?

A. No; it is not now.

Q. But it can be done that way?

A. It can be done, because up until the acquisition that I referred to in 1937, that is the way we were operating with another line into Philadelphia, and I believe there is a similar operation between Moran and McCarthy today.

Q. Then, insofar as the through movement of trailers is concerned, it is not necessary to have unification to bring that about?

A. No.

Q. You spoke of unification as being a nucleus—affording a suitable nucleus for a motor truck transportation system.

Mr. Arbour, do you know of any outstanding commitments or any arrangements of any kind whatsoever for the acquisition of any additional lines in the event that unification is approved?

A. There is absolutely none, so far as I know. As a matter of fact, I might state that my own opinion is that we got a job to do here of our own, and we are not interested in any expansion.

Q. Then, in speaking of that nucleus, you did not have in mind any further expansion?

A. No, no.; I meant this unification right here.

Q. Did I understand the testimony of the former witness correctly, Mr. Arbour, when he made reference to some equipment financing that was recently done by Consolidated.

408 A. That is right.

Q. When was that financing?

A. I think the approximate date was either May or June.

Q. Of this year?

A. No. Wait a minute. In March—about the 15th of March, I should say.

Q. Of this year.

A. That is right.

Q. Was that a substantial amount of financing?

A. It was.

Q. Would you give the amount?

A. It involved approximately a half a million dollars.

Q. What was the nature of that financing? Was it a bank loan?

A. Well, maybe if I give the history of it you can tell me what the nature of it was.

Q. Go ahead, Mr. Arbour.

A. Nothing more than an equipment loan. In other words, we bought some additional equipment, a very substantial amount, and we borrowed the money from the Guaranty Trust in New York to pay the manufacturer of the equipment. For that we gave the Guaranty Trust our note, secured by the equipment, for a period of, I think, 54 months.

409 Mr. JOSELOFF. Just to make one correction to get the record clear, what you mean is that you gave the Guaranty Trust a conditional sale agreement? There were no notes executed?

The WITNESS. Well, all right. That must be what it was, but to me they were still notes; that is the only way I know them by, but now that you speak of that, I know it was a conditional bill of sale.

By Mr. WIPRUD:

Q. What interest did you pay?

A. Three and a half and four.

Q. I believe you testified, Mr. Arbour, that you are self-insurers.

A. We are to a certain extent, as I outlined in my testimony—not entirely.

Q. As I understand it, you have excess insurance?

A. Well, for instance, in cargo we have it fully covered, which we buy. We do not self-insure that portion.

Q. Do you think you have as good an insurance arrangement as any other trucking line?

A. I do.

Q. Or as good insurance as the proposed unification would have?

A. Of course, I am a believer in our theory of coverage, and I believe it would be advantageous to the remainder of the lines to follow that theory. Whether or not that will be borne out in actual analysis after the unification, I do not know.

410 Q. Well, you believe, do you think, that you obtain insurance as reasonably as anybody?

A. I believe I do; yes.

Q. Referring, Mr. Arbour, to the United Sales Company, in the Commission's report in the prior case, Docket 1223, The Transport Company—Control—Arrow Carrier Corporation, et al., it is stated on page 104 that Consolidated owns all of the United Sales' outstanding common A and six shares, representing 75 percent, of its common B outstanding. Has that situation changed since that report?

A. No; I believe that is the same.

Q. And the other shares are what—qualifying shares?

A. Qualifying shares; that is right.

Q. Can you state for the record the volume of business of United from the date of acquisition, which I understood was in May 1939, for the balance of that year?

A. \$76,899.51.

Exam. BAKER. For what period was that, Mr. Arbour?

The WITNESS. That was from May 5 to December 31, 1939.

By Mr. WIPRUD:

Q. Of that amount, how much represents sales by United to Consolidated?

A. \$76,334.

Q. Now, can you give us the figure for the calendar year 1940?

A. \$157,086.31.

411 Q. Of that amount, what represents sales by United to Consolidated?

A. \$157,086.31.

Q. Can you give us the figures to date?

A. I can give it to you up to 6-14.

Q. 6-14?

A. \$68,600.

Q. Of that amount, what—

A. The gross sales were \$69,281; Consolidated Motor Lines sales, \$68,600.

Q. Is United a manufacturing company?

A. They are not.

Q. Can you describe a little more fully the nature of their business?

A. Well, they repair tires and casings, and they handle sales of accessories.

Q. They purchase accessories and sell them to Consolidated; is that it?

A. That is right.

Q. And tires?

A. That is right.

Mr. WIPRUD: I believe that is all, Mr. Examiner.

Exam. BAKER. Mr. Arbour, you stated, I believe, that the contract contemplated that United Sales would discontinue operations in the event this application were approved.

The WITNESS. No; I believe I said United Arbour would  
412 discontinue; not United Sales.

Exam. BAKER. That is what I intended to say—United Arbour.

Does not your agreement give you the alternative of disposing of the operations of United Arbour?

The WITNESS. Yes. The agreement says that they be discontinued or disposed of.

Exam. BAKER. What are your present plans in that connection?

The WITNESS. Discontinue.

Exam. BAKER. The contract also provides that prior to the closing date Consolidated may acquire not more than 90 shares of its capital stock at a price not exceeding \$400 per share. Has that privilege been exercised?

The WITNESS. It has.

Exam. BAKER. And they purchased the entire amount specified?

The WITNESS. We have 90 shares at \$400 per share.

Mr. JOSELOFF. That was the transaction to which you testified on direct, Mr. Arbour.

The WITNESS. That is right.

Mr. JOSELOFF. A reduction of capital shares from 2,289 to 2,199, the present number of capital shares.

Exam. BAKER. So 2,289 shares presently outstanding is the amount after exercising the privilege referred to in the contract?

413 The WITNESS. That is right.

Exam. BAKER. Does the balance sheet in the application as of April 30, 1941, reflect the purchase of those 90 shares?

The WITNESS. Have you the balance sheet there?

Exam. BAKER. Do you know the date of such purchase? Perhaps that would be an answer.

The WITNESS. No; I am not sure of it. I thought I had it in my notes, but—

Mr. SULLIVAN. It is not shown, Mr. Examiner. The exhibits which Mr. Reicher is presently preparing will reflect it.

Exam. BAKER. There would be a deduction from your net worth to take care of the expenditure made for that capital stock?

The WITNESS. That is right.

Exam. BAKER. You made reference to the amount of interchange freight which was interchanged with members of the proposed unification. Has there been any substantial increase in that amount during the past year and a half?

The WITNESS. No; there has not.

Exam. BAKER. You also mentioned that your load factor is about 84 percent.

The WITNESS. That is right.

Exam. BAKER. Is that on your line-haul operations?

The WITNESS. Yes; on our line-haul operations.

414 Exam. BAKER. Would such a load factor be maintained in connection with your feeder lines?

The WITNESS. Well, by "feeder lines" you mean our suburban pick-ups to feed into the terminals for consolidation for line haul?

Exam. BAKER. Yes; that is right.

The WITNESS. That would not be included, because that is considered a local operation, insofar as we are concerned, in our system.

Exam. BAKER. Do you know what your load factor would be on such an operation?

The WITNESS. No; I do not believe I do.

Exam. BAKER. Would you say that your vehicles are generally loaded to capacity in that operation?

The WITNESS. Well, no; not in suburban runs because you make a complete circuit route, and some days you might come back with a full load, and many days you would have to come back with a half load, but you have to make that route, anyway. But they are not loaded to capacity, I am sure of that. There might be a few exceptions to that, of course.

Exam. BAKER. In other words, if your operations were consolidated with those of the McCarthy Freight Lines, it could logically be expected that the vehicles would be better loaded in that service?

415 The WITNESS. Very definitely so. In my example in the Southeastern merger, I referred to a great extent to the satisfactory service in that area, combined with the increased load factor of our local operations.



**Exam. BAKER.** You outlined the safety measures which are presently taken by Consolidated. As a member of the Board of directors of applicant, do you know whether or not applicant has any plans for inaugurating similar measures throughout this system?

**The Witness.** I know that in discussions we have very definitely discussed similar safety set-ups to be made for the system—something similar to our present safety set-up, and maybe improved to some extent.

**Exam. BAKER.** At any rate, applicant would have the benefit of the experience of Consolidated in that respect; would it not?

**The Witness.** It would.

**Exam. BAKER.** I believe you stated awhile ago that all of your lines were paralleled by the lines of one or more of the carriers involved in this unification. Does McCarthy Freight System operate into New York City?

**The Witness.** No; they do not, with the exception. I believe I am correct in stating, that at the present time there is the precious metals operation they have between Bridgeport and New York, but not for commodities generally.

**Exam. BAKER.** So your carrier, then, would be the only  
416 one of those here involved which is authorized to operate from New England points into New York City?

**The Witness.** That is right.

**Exam. BAKER.** I believe you also stated that at one time you had arrangements with an independent carrier for the interchange of trailers.

**The Witness.** That is right.

**Exam. BAKER.** And you stated that it was possible at the present time to make such arrangements. Is it practicable to interchange trailers with independent companies?

**The Witness.** The answer to that question, Mr. Examiner, is "yes" and "no." It is practical insofar as loading trailer and exchanging it, and eliminating rehandling at the connecting line points, but the headaches of following your equipment after it leaves your control, in my opinion, overshadow to a great extent the benefits that you may get from such an exchange. But it has been done; it is being done, and we did it for many years, but I would not want to do it with a dozen different carriers. I would want to be sure of the company that I was doing it with.

**Exam. BAKER.** Do you have arrangements with any company at the present time for interchanging trailers?

**The Witness.** Not as a regular procedure. Once in a while we do to expedite a movement or for special movement we might ex-

change a trailer, but nothing as a definite arrangement with anybody.

1 EXAM. BAKER. Referring to Exhibit No. 3, do you, of your personal knowledge, know whether the carriers there listed actually operate to the points indicated, or does the exhibit represent merely that they have authority to operate to such points?

THE WITNESS. This exhibit was prepared under my jurisdiction. I went over it with the people who made the preparation, and it was prepared with the information that we received from the Interstate Commerce Commission, as well as from our knowledge of every operation. It is my belief that they operate, actually operate, in every point mentioned.

EXAM. BAKER. Are all of these companies common carriers?

THE WITNESS. They are.

EXAM. BAKER. Are they common carriers of general commodities?

THE WITNESS. They are common carriers of general commodities.

EXAM. BAKER. I believe those are all of the questions I have of this witness.

MR. WIPRUD. Mr. Examiner, may I ask one question as a result of your examination?

EXAM. BAKER. Yes, sir.

By Mr. WIPRUD:

418 Q. Mr. Arbour, referring to Exhibit 5 attached to your application—I believe it is attached to your contract—certain nonrecurring items are listed, of which one is \$5,000 to the Phoenix Securities Corporation. Is that in connection with this equipment financing that you spoke of?

A. It is not.

Q. Do you mind stating what it is for?

A. That was for services that were rendered by the Phoenix in helping us negotiate, giving us their experience and actually negotiating to a great extent a previous deal.

Q. Was that in the former proceeding here, involving the Transport Company?

A. That is right.

Q. Is the same thing true of Coverdale and Colpitts?

A. No, sir; it is not. They are our consulting engineers, retained for years and years, and it is our belief, as well as of the other people here, that with the consolidation of this group they will have all of the engineering ability within this group that will be necessary.

Q. There is an item of forty-five thousand and odd dollars for bonuses to employees for the year 1940.

A. That is right.

Q. Do the officers of United Sales receive a salary?

A. One officer receives a salary, and he is the direct head of United Sales; he receives a salary; yes, sir.

Q. Who is that?

A. Wendell Simpson.

419 Q. He is vice-president, is he?

A. That is right.

Q. What salary does he receive?

A. Well—

Mr. JOSELOFF. Mr. Examiner, I do not like to interrupt at this time, but it seems to me we are going a little far afield there from the case at hand, and while I have no objection, as such, to having the last question answered, I do not see that it is relevant in this proceeding.

Mr. WIPRUD. If the counsel has any objection, I withdraw the question.

Exam. BAKER. Very well. Are there any additional questions?

Mr. WIPRUD. That is all.

Mr. JOSELOFF. I have just one further question.

Redirect examination by Mr. JOSELOFF:

Q. The earnings of the United Sales have been reported to the Interstate Commerce Commission, in the annual reports on file with that body, Mr. Arbour?

A. They have.

Exam. BAKER. That is the only question you have?

Mr. JOSELOFF. Yes.

Exam. BAKER. You are excused.

The WITNESS. Thank you.

(Witness excused.)

420 Exam. BAKER. Call your next witness.

Mr. JOSELOFF. Mr. McCarthy, will you take the stand, please?

JOHN J. MCCARTHY, being first duly sworn, testified as follows:

Direct examination by Mr. JOSELOFF:

Q. Will you give your name and address to the reporter, please?

A. John J. McCarthy, 425 Canton Avenue, Milton, Mass.

Q. What is your position and what are your duties with the McCarthy Freight System?

A. Chairman of the board and general manager; also director, McCarthy Freight System.

Q. And your position with its affiliated company, Southern New England Terminals?

A. Treasurer and director of Southern New England Terminals.

Q. I will ask you to turn to Exhibit B-7 of the application and tell us whether or not the information therein contained with regard to the McCarthy Freight System and Southern New England Terminals is correct?

A. It is.

Q. Would you wish to make one exception in the case of the statement on the authorized preferred stock of the Southern New England Terminals?

A. On the authorized number of shares of the Southern  
421 New England Terminals, there are 300 and not 500.

Q. That is a typographical error in the exhibit, Mr. McCarthy?

A. And the clerk of the Southern New England Terminals is Charles F. McCarthy.

Q. I ask you whether that figure of 500 shares is a typographical error?

A. That is so.

Q. Would you state the dates of incorporation of the McCarthy Freight System and the Southern New England Terminals?

A. McCarthy Freight System was incorporated on September 20, 1915; the Southern New England Terminals on June 16, 1930.

Q. Will you describe briefly the history and the growth of the McCarthy Freight System?

A. The McCarthy Freight System was started in 1890 and ran along as such, increasing from year to year; until 1915, the date of incorporation. From 1915 to 1937 there was natural growth, and then there were one or two small acquisitions in the meantime; but in August, 1938, the Byrolly Transportation Company of Waterbury, Conn., was merged with McCarthy Freight System.

Q. Will you describe briefly the history of the Southern New England Terminals and the nature of it?

A. The Southern New England Terminals was formed as a real estate operation, and owns the terminals which are leased to the McCarthy Freight System at a rental comparable to  
422 any other rentals that you might make.

Q. Of the terminals at the present time, how many are owned by the Southern New England Terminals; that is to say, how many of the terminals at present leased by the McCarthy Freight System?

A. There are five.

Q. How many terminals are owned by the McCarthy Freight System?

A. There are two.

Q. And all the other terminals are leased from other sources?

A. That is right. -

Q. Will you explain why it is that two of the seven terminals are owned by the Freight System and five by the affiliated company?

A. The two that are owned by the Freight System are, first, the two terminals that we built, and after we had built these two we saw that in the future we would have to do a great deal more than that, and at that particular time it was decided to be good business to form another company to handle that.

Q. Is it your opinion that the real estate operations and common carrier operations should be divorced rather than being handled by one company?

A. Well, in our particular case we thought that it was better to be handled that way.

Q. What is the nature of the business of the McCarthy  
423 Freight System?

A. We handle general commodities on a daily schedule of service.

Q. And generally what is that territory?

A. Generally, it is the States of Massachusetts, Rhode Island, and Connecticut, but we do have an additional operation——

Q. Excuse me, but before you go into that——

A. In Westchester County, New York, applying on general store merchandise.

Q. Now, those operating rights, Mr. McCarthy, are very specific and are set forth in Docket No. MC-59865, through Sub. No. 3, on file in the records of the Commission?

A. That is right.

Q. Do you wish to make reference to that for a more specific definition of your operating rights?

A. I don't know just what you mean.

Q. I say, do you wish to make reference to those docket numbers for a more specific definition of your operating rights?

A. Yes; No. 59865——

Q. I have already named them, but I was wondering whether you wished to make reference to them for a definition of your operating rights.

A. Yes.

Q. That is all on that. What intrastate rights has the McCarthy Freight System?

424 A. In those three States of Massachusetts, Rhode Island, and Connecticut, we have intrastate rights that are at least equal to, if not a little more than, the interstate rights.

Q. That is to say, interterritorial coverage.



A. That is right.

Q. And when it comes to the volume of business, how do they compare?

A. Our intrastate business is approximately 25 or 30 percent of our total business.

Q. Now, Mr. McCarthy, in connection with the business of the McCarthy Freight System, you recall, do you not, that in the prior hearing before this Commission, and particularly in connection with Dockets Nos. 1223, 1244, and 1264, there was a contract operation of the McCarthy Freight System in connection with telephone supplies.

I ask you whether or not, in the event of this application being approved, it is the intention of the management to abandon that contract operation and request permission therefor, if the Commission should so desire?

A. That is correct.

Q. Now, in addition to that operation, is there another specialized contract operation of the McCarthy Freight System?

A. There is. We do have a contract operation to handle precious metals between Fairfield County, Connecticut, on the one hand, and the metropolitan areas of New York on the other, 425 and other southern New England points. That is for the transfer of gold and silver.

Q. I will ask you, please, to explain for the record the nature of that operation.

A. Well, in that particular operation we have to have special equipment. It is all closed equipment, and it has a Babco alarm system, and the drivers all carry revolvers, and we have extra men on the trucks.

Q. These trucks are armoured trucks?

A. That is correct.

Q. And are they specially fitted and adapted to that particular type of business?

A. Yes; they are particularly built for that work, and are not much, if any value, in anything else.

Q. From the standpoint of service in connection with the handling of these precious metals, what can you tell us?

A. Well, it is a specialized service, of course, on account of the value, on the one hand, and the service demands are great, on account of fluctuations in the market.

Q. When you say that, will you please illustrate or elaborate on the demands of that service?

A. Well, the market on that changes even during the day, and unless that is delivered promptly in the morning there would be a complaint from the people receiving it, on that account.

Q. Is this equipment used exclusively for this particular  
426 type of business?

A. Yes.

Q. I ask you whether or not it is possible for the McCarthy Freight System to handle this kind of business under its authority from the Interstate Commerce Commission to handle general commodities, with certain exceptions.

A. Well, of course, we have excluded it from our common carrier operations.

Q. Is it specifically excluded by terms of the order defining general commodities?

A. Oh, yes.

Q. The exceptions.

A. That is correct.

Q. Do you know whether or not that similar type of designation of carriers handling general commodities, and containing the so-called usual exceptions, applies to other common carriers competing with you?

A. Yes; I know that it does.

Q. Are there any other common carriers, with reference particularly to Consolidated Motor Lines, that can handle this business under their common carrier certificates?

A. There is nobody in New England, so far as I know, with the exception, possibly, of the American Railway Express.

Q. Are they a common carrier of commodities generally?

A. Yes.

427 Q. Are they a specialized contract carrier; do you know?

A. Well, I would say that they are common carriers?

Q. Do you know whether, in their handling of these precious metals, they are handling them as a common carrier or contract carrier?

A. I could not answer that.

Q. In other words, then, as I understand your answer to my previous question, while it is your opinion that the American Express may be a common carrier similar to the McCarthy Freight System, yet you do not know what their classification is insofar as the handling of precious metals is concerned?

A. No; I do not.

Q. Aside from the American Express, is there anyone, else, common or contract, or however designated, that you know of, in New England, to handle this precious metals movement?

A. Not in referring to these particular goods and the points that are involved.

Q. In your opinion, is this movement at all competitive with the common carrier operations of the McCarthy Freight System?

A. What is that question again?

Q. Is it competitive?

A. No.

Q. With the common carrier operation?

A. No; in no way.

Q. Would it be competitive with the common carrier operations of Associated Transport, if the proposed unification were to be approved?

A. No.

Q. If this movement were to be abandoned or discontinued by the McCarthy Freight System, would the shippers suffer hardship thereby?

A. Well, of course, there is nobody at the present moment to handle it.

Q. Compared with the volume of the McCarthy Freight System, how much volume would this movement amount to?

A. Oh, perhaps in volume, it runs \$50,000 a year.

Q. And what is the volume of the Freight System for the year 1940?

A. Around \$2,000,000.

Q. So that it is relatively an insignificant part of the volume insofar as a comparative basis of dollars and cents is concerned; is that right?

A. That is true.

Q. Also with regard to the territory served by this movement, is it not a fact that a considerable portion of this movement goes to New York or points south of New York, in the New York metropolitan area, which territory is not and cannot be served except by the McCarthy Freight System?

A. That is right.

Q. From your years of experience as an operator of common carriers, is it feasible or possible to handle this movement as a common carrier?

A. No; it would be very hard, particularly from a rate standpoint, because this moves sometimes in very small quantities, as we consider tonnage, and, of course, another factor enters into it, and that is that it would, of course, be published as a common carrier, and that information would be common knowledge of what we are doing, and we do not believe that that is now the case, and in that way it would set up a lot of dangers that we feel at the present time it does not.

Q. You mean it would open up information and make it easier for anyone to watch and detect these movements; is that your point?

A. That is true. We think that at the present time there are not too many that know about it, or realize just what we are transporting.

Q. Now, in addition to this factor, from the standpoint of actual operation of the movement, does it lend itself to a common carrier operation, with regularly scheduled runs and stops?

A. No; it could not be, under any conditions. The hazard is too great.

Q. And from an operating standpoint, does it require specialized handling?

A. Yes; it does. You could not operate it—

430 Q. Now, there is a statement, I believe, in the application to the effect that the contract operations of the McCarthy Freight System would be discontinued, or permission requested of the Commission to withdraw the contract operations of the McCarthy Freight System. I believe that is correct?

A. That is.

Q. Did you have that provision in mind in regard to the first type of contract operations that you talked about—the telephone equipment and supplies?

A. That is right.

Q. How does the management of the Freight System feel with regard to this specialized movement of precious metals, gold and silver?

A. Well, we have handled this for a very long period of time, and it had a lot of headaches getting straightened out, and it has now gotten to the point where it is working very successfully for all concerned, and we consider it highly desirable business.

Q. How much tonnage is the McCarthy Freight System handling; that is, for the year 1940 and for the first six months of 1941?

A. In 1940 our tonnage was 294,522 tons; for the first six months of 1941, we handled 175,051 tons.

Q. And that, of course, is for the six periods in 1941; is that it?

431 A. That is right.

Q. Less than a half a year.

A. Yes.

Q. What is your estimate of the number of tons that the Freight System will handle for the year 1940?

A. For 1940?

Q. 1941. I beg your pardon.

A. I would say we would handle approximately 400,000 tons.

Q. Now, of this tonnage, Mr. McCarthy, how much approximately is interchange freight?

A. Ten percent.

Q. Will you name your principal interchange points and the carriers?

A. Yes; M. Moran Transportation Lines at Pittsfield, Mass., and Schenectady, N. Y.; H. P. Welch Company at Boston and Springfield; Alger Brothers at Boston; Devereaux Brothers at Waterbury, and Franklin Auto Delivery Service at Bridgeport.

Q. What percentage of your interchange freight is handled with M. Moran Transportation Lines, which, I take it, is the only carrier in the proposed unification with whom the Freight System interchanges?

A. About 4 percent of the 10.

Q. If the proposed unification were to be approved, would there be, in your opinion, any diversion of interchange of freight from the carriers with whom you are now interchanging freight, and who are non-members of the proposed unification?

A. No; there could not be any.

Q. Why?

A. Because the others go in a different direction, and we have no service there.

Q. I want to clear up one point for the record, Mr. McCarthy. In connection with the amount of interchange of freight with the M. Moran Transportation Lines, is it 4 percent of the total amount of the interchange freight, or 4 percent of the volume?

A. Four percent of the ten. We have ten percent of interchange freight. Four percent of that is with Moran.

Q. In other words, you mean 4 percent.

A. Well, about half of our interchange business is with Moran.

Q. That clears it up. Thank you.

A. That is it.

Q. Do you think it would be of advantage of the Freight System to have operating rights beyond its lines, particularly to Metropolitan New York and points beyond?

A. Yes; as a matter of fact, for 2 years we have attempted negotiations to buy rights into the New York Metropolitan area, but on account of Transport application, and what not, we hesitated, and even after that, during this year, we have hesitated about doing anything.

433 Q. Would that have any effect on the present load factor of the McCarthy Freight System?

A. Well, of course, we do not hit any large metropolitan area after we leave Boston, and there is a very heavy flow of traffic to what we call south, and, of course, in ordinary times you really need to hit another metropolitan area to have a good load factor.

Q. What is the present load factor of the McCarthy Freight System?



A. Of course, at the present time, it is about normal, but I say that in normal times it would, perhaps, be around 75 percent.

Q. Did you say at the present time?

A. At the present time it might go up to, say, 80 percent.

You see, then, an increase in this load factor resulting if approval be had of the proposed unification?

A. Oh, very definitely.

Q. Will you explain the maintenance set-up of the Freight System?

A. We have throughout the system two major repair shops, one at Taunton, Mass., and the other at Springfield. In most of the other terminals we have mechanics for minor repair work.

Q. Do you have a system of safety patrols similar to the Consolidated Motor Lines?

A. No; we have not.

434 Q. You were here when Mr. Arbour testified about the system of safety patrols that the Consolidated uses?

A. That is right.

Q. Do you think they could be used to advantage with all of the other methods of the proposed unification, including the McCarthy Freight System?

A. There is no question about that.

Q. You heard Mr. Horton, Mr. Seymour, and Mr. Arbour testify on the extension of the scientific maintenance program, particularly with reference to preventive maintenance. Do you see that as a definite advantage to all of the companies?

A. There is no question about it. We have attempted to do some of it in our own small way.

Q. Can you see room for an extension of that service in your own organization?

A. There is no question about that.

Exam. BAKER. Mr. Joseloff, is this a good place to stop for lunch?

Mr. JOSELOFF. I would like to ask the witness one question, and than I think it would be convenient.

Exam. BAKER. All right.

By Mr. JOSELOFF:

Q. Is the insurance coverage of the McCarthy Freight System above the requirements in all instances set by the Interstate Commerce Commission?

A. Yes; very much so.

435 Q. And is the coverage complete and on all kinds of risks?

A. That is correct.

Q. And are statistics of that coverage on file with the Interstate Commerce Commission?

A. They are.

Mr. JOSELOFF. That is all—I mean for the moment.

Exam. BAKER. Mr. Mann; do you want to enter an oral appearance?

Mr. MANN. Yes; for the National Industrial Traffic League, I wish to enter the appearance of James D. Mann, 450 Munsey Building, Washington, D. C.

Exam. BAKER. Are you a registered practitioner?

Mr. MANN. Yes; I am.

Exam. BAKER. What is your position in this matter?

Mr. MANN. The League has not taken a position in this matter as yet, but we thought we should enter our appearance and see what develops.

Exam. BAKER. Very well.

We will recess until 2 o'clock p. m.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)